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LABOUR COURTS

AN INTERNATIONAL SURVEY OF JUDICIAL SYSTEMS FOR THE SETTLEMENT OF DISPUTES

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PREFACE

In 1933 the International Labour Office published a report entitled *Conciliation and Arbitration in Industrial Disputes* [1], the first part of which deals with general problems of conciliation and arbitration, while the second part comprises monographs on the conciliation and arbitration machinery in use in the various countries.

That report deals mainly with conciliation and arbitration as a means for the settlement of " collective disputes about interests ", i.e. collective labour disputes which arise out of conflicting views on conditions of work between employers or employers' trade associations on the one hand, and workers or workers' trade organisations on the other. Those disputes pertain less to misunderstanding in regard to accepted conditions of work than to disagreements as to what the conditions of work should be.

The settlement of collective disputes about interests by conciliation or arbitration aims at fixing new conditions of work which often become the subject of collective agreements between the parties concerned.

But there are also labour disputes arising out of existing rights, whether such rights are based on the law or some works regulation, or on an individual or collective agreement made between the parties. The latter type of conflicts are usually referred to as " disputes about rights " or justiciable disputes [2], and fall within the competence of the labour courts, at any rate in the countries where a special labour judiciary is to be found. Although the machinery resorted to for the settlement of collective disputes about interests is usually that of conciliation and arbitration, that procedure is sometimes used also for the settlement of disputes based on existing rights. On the other

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[1] INTERNATIONAL LABOUR OFFICE : *Conciliation and Arbitration in Industrial Disputes*. Studies and Reports, Series A (Industrial Relations), No. 34. Geneva, 1933. The principal changes made since 1933 in the laws on conciliation and arbitration in the different countries have been noted in the *I.L.O. Year-Book* for the respective years.

[2] For a definition of " conflicts about interests " and " conflicts about rights ", see below Chapter IV : " Description of the Labour Judiciary ".

hand, while the separate labour courts are established mainly for the purpose of adjudicating upon individual labour disputes based on the existing rights of the parties, there are many instances where these courts are also entrusted with the settlement of collective labour disputes, even collective "disputes about interests", but particularly collective disputes affecting established rights.

There is thus in many countries a close connection between the functions of the labour courts and those of conciliation and arbitration procedure. Moreover, although the settlement of individual justiciable disputes by the labour courts has not attracted the attention of the public in the same degree as the arbitration of collective disputes about interests, which very often affect at one and the same time all the employers and employees in a whole branch of industry, the part played by the labour courts in certain countries is not in the least inferior to that of the conciliation and arbitration bodies set up with a view to the maintenance of social peace. The fact that the texts of the laws have not always clearly differentiated between disputes about rights and disputes about interests may be one more reason for dealing in separate studies with the bodies entrusted with the settlement of these two categories of conflicts so as to bring out their main characteristics.

It is for these reasons that the International Labour Office has deemed it desirable to prepare this study on the Labour Courts as a complement to the survey on Conciliation and Arbitration.

It should be added that the machinery for the settlement of labour disputes is often designated in terms which may be misleading. For instance, the Industrial Courts set up in Great Britain under the Industrial Courts Act, 1919, are not, as the name implies, courts for the judicial settlement of labour disputes, but mere boards of arbitration, since the decisions they render are not binding on the litigants unless the latter agree to be bound thereby. Those courts were therefore described along with other similar bodies in the previous study of the Office on conciliation and arbitration. On the other hand, so-called conciliation and arbitration boards such as exist in Mexico also serve the purpose of judicial tribunals with compulsory jurisdiction in regard to labour disputes, including individual disputes about rights. For this reason such boards are dealt with in this Report.

The first part of this Report gives a comparative analysis of the judicial labour systems in existence, with the object of drawing attention to points of similarity or differences in the constitution and working of the various labour judiciaries. The second part contains a series of national monographs arranged in alphabetical order and describing the various phases of the development and operation of the special procedure in force in each country for the judicial settlement of labour disputes. It may be added that the *International Survey of Legal Decisions on Labour Law*, published annually by the International Labour Office since 1925, contains a note on the competent authorities having jurisdiction in labour matters in certain States, and brief notes on the labour judiciary of various States also appear from time to time in *Industrial and Labour Information* and in the International Labour Office *Year-Book*, but a much more complete and detailed account will be found in this survey.

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§ 1. — The Reasons for the Institution of Labour Courts

In a well-organised society there will always be found some institution designed to settle disputes of a legal nature which may arise between the members of the community. This essential function inherent in the government of a State is usually performed by an organ known as the Judiciary. Of the various classes of disputes which may be said to exist there is one which has required more than usual attention owing to the large number of persons it affects and consequently to the serious repercussions which it is found to have on society. This class of dispute has come to be known under the generic term " labour dispute ".

Labour disputes affect a wide area of human relations, since they embrace all the possible aspects of the daily relations between employers and their employees. These obviously concern the great mass of the population in all countries. They concern particularly the manual workers who receive only a very modest salary and consequently are not in a position to cope with the costs and legal delays of the ordinary courts of law for the settlement of their disputes. For instance, the workman who claims against his employer part of the day or weekly wage which he believes is owing to him is placed in a difficult situation when he finds that he must first make certain disbursements before he can bring an action before a court which will not render a decision for days or perhaps weeks. He will often prefer not to institute proceedings rather than to risk incurring the expenses necessary to obtain a judgment which will be delivered by a judge in another locality who is not familiar with the conditions of work in the locality where the labourer works.

In fact, when the sum involved is relatively small, the party who believes his rights to have been infringed will often refrain

from bringing an action before the ordinary courts, because he is well aware that after meeting the expenses occasioned by the payment of stamp duties, his lawyer's fees and other costs he will be left with a deficit even if he should win his case.

Moreover the worker who lives somewhat from day to day is not in a position to wait very long for the courts to decide as to what his rights are. Thus, in the case of wrongful dismissal, the workman to whom the employer refuses to pay compensation for dismissal would probably be financially incapable of meeting his regular obligations if he had to wait during the legal delays to which the ordinary courts are subject before he could obtain the compensation claimed. Generally he has no savings in reserve and consequently needs to have his rights granted without delay.

In order that justice may be done it is no doubt desirable that the worker should have his case decided by his peers, in other words that there should be among the labour judges an equal number of workmen of his category who are well acquainted with the conditions under which he carries out his work. Obviously the judge who may be the most qualified with regard to labour law will not necessarily be the best qualified to appreciate certain questions of fact to which a right settlement of labour disputes is subordinated.

Finally, it should be observed that the workman who is often permanently employed away from the place of his habitual residence finds an advantage in having the law administered by a court situated at his place of work, thereby avoiding costly if not impracticable travelling to and fro in case of litigation. The regular courts of law are usually set up in the most populous centres so as to minister to the wants of the largest number of people, whereas it is more in the interest of the workers to have the number of courts increased and their seats so distributed as to render them more accessible. Moreover, if he is to be judged by his peers it is obviously preferable that the labour courts should be situated in the neighbourhood of his place of work.

These are therefore the main reasons why many States have found that the settlement of labour disputes by the ordinary courts was not a satisfactory procedure and that it was indispensable to establish a special labour judiciary, which would involve less delay and less expense for the litigants than proceedings before the regular courts.

In some countries the shortcomings of the administration of law by the ordinary courts are compensated in part by the establishment of joint committees entrusted exclusively with the adjustment of differences which may arise out of the application of special laws, particularly social insurance laws. In other countries the labour inspectors also are given certain judicial powers to supplement the work of the regular courts of law and deal with a variety of disputes relating to hours of work, the payment of wages and other matters pertaining to conditions of work.

It is possible that such machinery, in addition to any conciliation and arbitration procedure which may have been set up for the adjustment of collective disputes, has sufficed to dispense with the establishment of a special labour judiciary. This explains in part the lack of labour courts in countries which have attained a high degree of industrial development.

Be that as it may, it is impossible within the limits of this Report to deal with all institutions which exercise quasi-judicial functions. This Report is therefore confined to an examination of the legislative enactments which provide for a uniform labour judiciary distinct from the ordinary law courts.

§ 2. — Origin and Growth of the Labour Courts

The common view is that the judicial labour tribunals at present in existence owe their origin to the probiviral court or *conseil de prud'hommes* which was set up at Lyons by virtue of a Napoleonic law passed in 1806. The principle of the probiviral court consisted merely in having certain labour disputes settled promptly and without expense by a council composed of representatives of employers and workers. The idea was not entirely new. It is said that a category of persons known as *prud'hommes* had existed already for several centuries in France, although their powers and duties had not been defined by a national law. In the fifteenth century the tradesmen of Lyons had obtained permission from King Louis XI to have certain disputes adjusted by *prud'hommes* just as had been done in the city of Paris for two centuries. The *prud'hommes* are persons specially acquainted with the subject matter upon which they may be asked to give an opinion.

The equivalent expression *probiviri* was used in Italy when at the end of the year 1878 probiviral councils composed of an

equal number of representatives of employers and workers were set up to deal with disputes in the silk industry. The experiment subsequently led to the passing of the Italian Probiviral Courts Act on 15 June 1893, which provided for the establishment of similar bodies for the settlement of various labour disputes in other parts of the country [1].

The settlement of labour disputes also received the particular attention of the legislator in Portugal, where as early as the sixteenth century labour judges were added to the list of ordinary judges on the regular courts, with the result that special tribunals composed entirely of labour judges were instituted by a Legislative Decree of 14 August 1889 [2].

The French Law of 1806 was amplified by Legislative Decrees of 1809 and 1810, and was made to apply to other parts of France, including the territories which to-day form part of Belgium and certain parts of Germany such as the Rhineland. The tribunals thus established were allowed to develop undisturbed in these countries. For instance, the Prussian Government preserved these institutions under the name of Rhineland industrial courts, which it perfected. In other parts of Germany there were set up local, regional and guild arbitration tribunals. All these institutions prepared the way for the passing of the 1890 Act, which prescribed the establishment of industrial courts in all parts of Germany, but on the initiative of the local authorities.

Before the end of the nineteenth century Austria, Norway and Switzerland had followed the example set by France, Belgium and Germany. In the other countries labour legislation on this subject was introduced at the beginning of the twentieth century and in most cases only after the world war. In certain parts of the succession States, there remained in operation for some years labour tribunals instituted in accordance with various laws formerly in force in the countries under whose dominion these States had been in the past.

It is scarcely necessary to emphasise the fact that the growing development of industry in a large number of countries has necessitated the adoption of further rules and regulations for the protection of the workers as well as for ensuring good relations between employers and workers. The application and interpretation of the new rules and regulations have in turn imposed

[1] Cf. monograph on Italy, p. 112.
[2] Cf. monograph on Portugal, p. 151.

additional burdens on the judicial tribunals. This explains why in recent years an increasing number of countries have favoured the establishment of a separate labour judiciary to share the task of the regular courts of law. At the present time twenty-three countries have set up special labour tribunals to handle labour disputes.

§ 3. — Development of the Labour Courts

The countries which have enacted laws very recently for the creation of judicial labour tribunals have benefited much from the experience acquired in that field by the countries whose laws date many decades back. In all cases, of course, the object was to set up permanent judicial authorities composed of representatives of employers and workers who would settle the labour dispute as promptly as is humanly possible and at practically no expense to the litigants.

In the early days the legislator was reluctant to promote schemes under which the workers would share jurisdictional functions on an equal footing with the employers on judicial bodies. For instance, until 1848 the representation of the workers was inferior in number to that of the employers on the probiviral courts in France. But ever since that date equal representation of the two classes on labour courts has been the accepted principle.

The legislator also showed some reluctance in giving the labour courts power to render binding decisions. The German Industrial Courts Act of 1890 gave legal force to the decisions of industrial and commercial courts in so far as individual disputes were involved, whereas these courts served only as conciliation boards when the disputes were collective. But their importance in that respect was never very great and during the last years they no longer served as conciliation boards. Similarly, under the 1893 Act, the Italian probiviral courts served only as conciliation boards when the amount involved in the dispute exceeded the sum of 200 lire. In a general way the jurisdiction of the labour tribunals was restricted at the beginning to rather small sums, but was subsequently extended to cope with later economic developments.

The earlier legislation in Belgium, France and Italy contemplated the creation of labour tribunals only for certain

parts of the country or for certain important industrial centres and in the case of Germany, under the 1890 Act, left it to the local authorities to decide whether or not such tribunals should be set up in their respective localities. The results in the latter case were unsatisfactory, for the municipal authorities were often disinclined to assume the additional financial burdens entailed by the creation of such courts. That is why, in 1901, the law was amended so as to make compulsory the establishment of industrial courts in all the communes having a population of more than 20,000 inhabitants. As will be seen below, the more recent Acts on the labour courts usually provide directly for the creation of such courts in all sections of the country.

It is important to observe that originally the labour tribunals were only empowered to deal with individual disputes based on contracts of employment in certain industrial undertakings, mostly in small-scale industries. But in the course of time their competence was extended to other industries, including the large modern factory systems, and in some cases to agriculture. Labour disputes connected with commercial undertakings were also included. In other words, the commercial employee or salaried employee was given the same advantages in this respect as had been granted years before to the wage earner. Such was the effect, for instance, of the amending Acts passed in Germany in 1904, in Belgium in 1910, and in Denmark in 1919. In France an Act of 25 December 1932 provides for the extension of the jurisdiction of the probiviral courts to individual disputes in agriculture. In Portugal and the U.S.S.R. recent legislation has broadened the scope of activity of the labour courts by extending their jurisdiction to certain cases of contravention of penal law. Apart from the wider range of subjects brought within the jurisdiction of the judicial labour authorities further progress was made by giving them jurisdiction with regard to collective as well as to individual disputes. In fact, there are countries where judicial labour authorities were instituted principally to judge collective labour disputes. This is a point which will be dealt with more fully in Chapter IV below, which deals with the jurisdiction of the labour courts.

CHAPTER II

CONSTITUTION OF THE LABOUR COURTS

The institution of a network of labour tribunals to operate alongside the regular courts of justice often raises a number of problems the solution of which must perforce depend upon the particular constitution of each country concerned.

When constitutional law or a special Act admits the principle of a separate labour judiciary, there remains the question of the advisability of setting up such labour courts in this or that district, the bodies which should be consulted previously, the type of labour courts to be set up, their division into different sections according to the needs of the case and so on.

There is always the question of the independence of the labour courts in respect of the regular judiciary and of the extent to which they may be linked to the ordinary courts without impairing their functioning. It behoves the legislator to determine whether the labour courts are to render final decisions or whether the final decision in labour matters is to be left to the regular appeal courts.

Such are some of the numerous problems which had to be determined in several countries. In the account given in the following pages, only the points actually settled by the legislation on the labour courts will be dealt with.

In the countries which form the subject of this study the constitution of the labour courts is generally a matter for national legislation. The main exception to be pointed out is the case of Switzerland, where the cantons have exclusive legislative competence in regard to probiviral courts. Mention might have been made here of the United States of America, where labour legislation devolves in part upon the federal authorities and in part upon the constituent States. But the National Labour Relations Board, which forms the subject of the study on that country, was set up by virtue of a federal Act.

In compliance with the national law for the establishment of labour courts, new labour courts may usually be set up by Government Decrees issued after consultation of certain competent

bodies. The latter rule does not hold good however in one country, namely, Belgium, where a national law is required for the creation of every new court. This is due to a peculiar provision of the Belgian Constitution, which stipulates that no judicial authority may be created save by a national law.

Naturally the special characteristics of the different political regimes are bound to appear in the process of building so important a branch of the judiciary as the institution of separate labour courts. For instance, in some countries the trade organisations considered as representative of the interests of the employers and workers are consulted before the establishment of labour courts. In France, Rumania and Spain these bodies are, on the one hand, the different trade chambers which look after the interests of the employers, and, on the other, those which are concerned with the interests of the workers. In Belgium the municipal authorities are consulted on the ground that they are required to share the expenses occasioned by the operation of the tribunals. Often labour courts are set up on the request of the trade organisations concerned. In France the law on the labour judiciary makes the creation of new probiviral courts compulsory when a demand to that effect has been made by the municipal council of the commune with the approval of the local trade chambers and councils. In other countries, the representative organs are consulted only for the appointment of the members to the courts.

The national law which is at the basis of a judicial labour system usually specifies the jurisdictional area of each labour tribunal or stipulates that the territorial jurisdiction of each court is to be determined by the law or decree in virtue of which it is set up. More often than not, the judicial districts of the labour courts are not coterminous with the judicial districts of the ordinary courts of law. It is important that they should not be, particularly in the highly industrialised countries where the need of labour tribunals in certain parts may not be at all related to the requirements of regular courts for the ordinary administration of justice. This particular aspect of the constitution of the courts was given much consideration in Belgium, where a Law of 25 June 1927 introduced a few changes in the existing law and restored the equilibrium between the number of probiviral courts in existence and the amount of litigation to be handled. This, of course, does not mean that the actual territory covered by certain labour and regular courts may not occasionally coincide,

even though the principle of a distinct territorial jurisdiction is recognised by law.

Many elements in the institution of judicial machinery are necessarily administrative in character and for that reason are more apt to vary from country to country. For instance, the law in France and Rumania specifies that only one labour court can be set up in a town ; and in France the town has to be one where industry or commerce is of sufficient importance. Where this condition is not fulfilled, no probiviral court is set up and the labour disputes go before the ordinary courts of law.

On the other hand, in certain countries, to mention only Czechoslovakia and Poland, when industrial conditions do not justify the establishment of a special labour tribunal in a particular district, the jurisdictional area of the labour court may be made to cover more than an ordinary judicial district or there may be created a labour disputes division in the ordinary courts on the principle of the individual labour courts.

Again, in other countries, for example in Chile, where a labour court of first instance consists of a single labour judge, the functions of the labour judiciary are discharged by the judge of the ordinary court of first instance in the districts where no special labour judge has been appointed. This means, of course, that the ordinary judge is then under obligation to act in accordance with the provisions of the Labour Code relating to the labour judiciary. A still more novel provision is to be found in the Yugoslav Industrial Act of 1931, which authorises the compulsory associations of persons engaged in commerce or in handicrafts to set up in their midst a special probiviral court for the settlement of disputes relating to the employment relations between the members of those associations and their employees.

In Germany the local labour courts are entirely independent of the ordinary courts of first instance, whereas the district labour courts are established in connection with the district courts of law, though they need not have the same seat as the regular district courts. In Rumania the labour courts are established in connection with the chambers of labour, which are special institutions for the representation and protection of labour.

In the countries which have legislated for the institution of a labour judiciary in recent years, the tendency has been to make the system applicable to all parts of the country, at any

rate to all parts where the recurrence of labour disputes appears to justify the measure. For instance, the Yugoslav Industrial Act of 1931 provides for the establishment of probiviral courts to deal with industrial disputes in any part of the country. The Labour Courts Act passed during the same year in Czechoslovakia stipulates that labour courts are to be set up wherever economic and social conditions so require. The same trend is found in the legislation on the labour courts adopted by Poland and Portugal in 1934.

The last point to be noted here in connection with the establishment of labour courts is their division into a number of sections or chambers according to the circumstances in different countries. In Belgium every probiviral court is divided into two chambers, one to handle disputes between employers and wage-earning employees, including seamen, and one for disputes between employers and salaried employees. There may also be established special chambers within a probiviral court to deal with disputes of a technical character or ordinary disputes between wage-earning employees on the one hand and salaried employees on the other. In France the probiviral courts are divided into sections corresponding to the various classes of trades and industries fixed by the decree in virtue of which the court is set up. The position is somewhat similar in Germany and Switzerland, where the labour courts are divided into two or more chambers and occasionally into special chambers for disputes affecting certain groups of wage-earning and salaried employees. The principle is also applied with certain variations to the labour tribunals in Rumania.

The law occasionally stipulates that special conciliation committees are to be constituted within the labour courts for the purpose of attempting an amicable settlement of the dispute before it is brought up for trial. In Belgium and France, for example, conciliation committees are set up in each chamber or section of a probiviral court. In other cases the first attempt at official conciliation is made at a preliminary sitting held for that purpose by the chairman either alone or with the help of assessors [1].

In a few countries provision has been made for the creation of special labour courts of appeal. This is the case notably in Belgium, Chile, Germany, Venezuela and in the Canton of Geneva

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[1] Cf. Chapter V : Preliminary Conciliation Procedure, p. 38.

in Switzerland. In the other countries, either there is only one instance, as in Sweden, or else appeals are taken before the courts of first instance or before the ordinary appeal courts. In the latter case labour assessors are sometimes added to the regular courts. Such is the position in Czechoslovakia, Italy and Poland.

The foregoing illustrations demonstrate abundantly the extent to which the constitution of the separate labour tribunals is affected by the constitutional and administrative peculiarities of each country.

CHAPTER III

COMPOSITION OF THE LABOUR COURTS

The main idea at the basis of a labour judiciary is that the litigants should be judged by their peers, so that the settlement of a dispute between an employer and his workman should be effected by a tribunal composed of an equal number of employers and workmen, who have selected one of themselves as chairman to direct the proceedings. But in practice that doctrine has been subject to derogations made necessary by the differences in the conditions in which a labour judiciary was set up in the different countries. There are also to be found certain variations with regard to details of organisation, the method whereby the members of the labour courts are appointed, the qualifications they must possess, their duties, their remuneration, and a number of other matters thei mportance of which varies considerably. In the analysis which follows a brief outline will be given of the contents of the statutory laws on the subject in the different countries.

In the majority of cases the labour tribunals comprise an equal number of assessors who are representatives of employers and of wage-earning or salaried employees, with the addition of a neutral chairman and one or more vice-chairmen appointed by the administrative authorities (and not elected directly by the members of the tribunal, as is the case in Denmark, France and in certain cantons of Switzerland).

In Belgium the chairman of the probiviral court is appointed by the Crown and chosen from a list of candidates submitted by the members of the court themselves, while the legal assessor, who, it should be said, is found only in Belgium, is appointed independently by the Crown. In Norway too and in Sweden not only the chairman but two of the six members of the labour court are appointed directly by the Crown.

In the other countries the presiding officer of the labour tribunal is appointed directly by the State judicial authorities, that is, by the Department of Justice. The selection is generally made from among professional judges (e.g., in Czechoslovakia, Germany, Poland and Rumania). Otherwise the chairman may

have been an official of the regular judiciary, as is the case for the labour courts in Spain, or again he may have been a public official trained in the law, as is specified in the Yugoslav law on the probiviral courts. In Italy and the U.S.S.R. the presiding officer at the hearing in labour matters is necessarily one of the judges of the regular courts, for in those two countries the labour judiciary consists of special hearings of the ordinary courts of law to which are added temporary assessors.

The employers' and workers' assessors and their substitutes on the labour courts are sometimes elected directly by the respective employers' and workers' groups, as is the case in Belgium, Denmark, in certain cantons of Switzerland and in France. In the last-named country the mayor of the commune draws up each year a list of electors, whereas in Belgium, to avoid unnecessary expenditure and to simplify the task of the different administrative authorities, the electoral lists for assessors are established at the same time as the electoral registers for the Chambers, the province and the commune. But more often than not the assessors are appointed by the administrative authorities from lists drawn up by the representative employers' and workers' trade organisations or by the competent trade chambers which represent the respective interests of the employers and of the working class, according to the political organisation of the country concerned.

In Czechoslovakia the assessors are appointed in accordance with the nominations of the trade organisations, by the president of the superior court of law in the district of the labour court, and in Spain by lots drawn before the chairman and clerk of the labour court. In Germany the nomination lists are established by the Labour Front. In Italy they are drawn up by the labour and social welfare sections of the provincial economic councils on the recommendation of the legally recognised trade associations. In Rumania, on the other hand, the bodies competent to establish the list of candidates for the post of assessor or substitute are the trade chambers which represent the interest of the employers and workers respectively, whereas in Poland both the trade organisations and the trade chambers may have their say in the matter. The organisations consulted will necessarily be different when, as may happen under the law of Chile, cases relating to maritime matters require that the assessors for the labour courts of appeal be chosen on the one hand from among shipowners and on the other from among officers or members of crews.

There are even countries where the labour courts do not comprise any assessors. Such is the case in Chile (labour courts of first instance), Peru and Portugal. It may be added that on the National Labor Relations Board in the United States of America there are neither employers' nor workers' representatives. That Board is composed of only three members, appointed directly by the President of the United States subject to the approval of Congress.

In Venezuela a recent Legislative Decree of 15 November 1937 provides for the institution of three labour courts of first instance to be composed of only one labour judge appointed by the federal authorities. That labour judge may be assisted by an employers' assessor and a workers' assessor if the litigants so require.

The labour court of appeal to be set up in accordance with this Decree will comprise five judges appointed by the federal authorities, but will not include assessors.

The number of members constituting labour courts varies from a minimum of three, including usually a chairman and one employers' and one workers' assessor with a substitute for each of them, as is allowed by the Yugoslav law, to a maximum of twenty members, with as many substitutes, as is provided for under the Belgian Act. What is of special importance is that when assessors are appointed the court should comprise an equal number of representatives of the employers and of the wage-earning or salaried employees. The term of office of the members varies from one year in some countries to nine years in others.

The qualifications for the post of assessor are usually laid down by law. The relevant Acts in Belgium, France and Germany specify that the representative of the employers and of the working class may be of either sex. In other countries the law merely stipulates that they must be nationals, a provision which may be interpreted in most cases to include women [1]. It is generally provided that to be eligible as assessors the candidates must have attained a fixed age, usually 25 or 30 years, and be in full possession of their civil rights. In some countries the law requires that they must have special knowledge of the conditions of work in the trade or industry with which they are connected and in certain cases they are required to have resided for a definite period of time within the jurisdictional area of the labour court. Under Rumanian law a fine varying from

[1] On this point see DE MADAY : *Les Femmes et les Tribunaux de prud'hommes*, Neuchâtel, 1917.

5,000 to 10,000 lei may be imposed by the labour court on the employer who prevents his employee from accepting the post or fulfilling the duties thereof.

In practically all cases the members of the labour tribunals take an oath to judge conscientiously and impartially, and to maintain some discretion with respect to the deliberations. They become disqualified for the post from the moment they cease to satisfy the requirements on which their appointment is based. They may then be removed either at their own request or on the authority of the body by which they were selected. But while in office they are in many countries subject to disciplinary fines for the neglectful discharge of their official duties. Such is the case in Czechoslovakia, Italy, Poland and Rumania. Under Polish law they are even liable to imprisonment not to exceed two weeks when there is no means of recovering the amount of the fine.

The assessor may lodge an appeal against the imposition of a fine. In Czechoslovakia the appeal is laid before the ordinary courts, whereas in Poland an assessor has fourteen days during which he may bring an appeal before a special tribunal composed of the chairman of the labour court or of the regional court of law and of four assessors, that is, two employers and two workers. In Italy there is no appeal against the disciplinary fine. In Rumania also there is no appeal, but the fine imposed is relatively smaller and the assessor is exempt from the payment of it if he can subsequently justify his actions.

What has been said above regarding the appointment of the members of the labour courts in general also applies with certain modifications to the selection of the members of the labour courts of appeal in the countries where such appeal tribunals exist.

Similarly, when the law provides for the setting up of conciliation committees as part of the judicial labour system, the members of the conciliation committees are selected from among the members of the labour court and consequently satisfy the usual requirements.

The chairmen and vice-chairmen as well as the clerk and other officials on the staff of the labour courts are generally paid a salary. The assessors on the other hand do not as a rule receive any remuneration for their services. This is so even in countries like Czechoslovakia and Poland where, as has been seen above, they are liable to disciplinary fines in case of failure to fulfil their duties in a satisfactory manner. On the other hand the laws provide for a remuneration in Italy and Rumania, and also in the U.S.S.R. In the canton of Geneva the law

on the probiviral councils lays down that the labour judges are entitled to an indemnity of four francs per sitting, and the presidents and secretaries of groups to a supplementary indemnity of two francs per sitting, although the sittings are in practice held in the evenings, so that there is no question of indemnifying them for a loss of salary. In France, Germany and Poland the members of the labour courts receive no remuneration for their services but they are entitled to compensation for the expenses incurred by loss of time and otherwise in the exercise of their functions. There is every reason to believe that in practice, and even where the statutory law on the labour courts does not say so expressly, the assessors are generally reimbursed for the loss of salary suffered in the exercise of their duties as assessors. In all countries where it is necessary for them to travel in the exercise of their functions, the assessors are entitled to compensation for their travelling expenses.

The payment of salaries and of travelling expenses and other expenditures involved in the operation of the judicial labour system in the different countries are defrayed in various ways. In Czechoslovakia, Denmark, Norway, Peru and Poland they are paid out of the national budget. In France and Belgium the expenses are met by the various municipalities and in Rumania by the trade chambers responsible for nominating the assessors. The labour courts Acts of several countries do not stipulate whether the central authority or the local authorities shall be responsible for defraying the operating expenses. It may be presumed that in such cases the practice adopted is based on the special administrative procedure in force in the particular country.

In any event a much smaller portion of the expenses is to be recovered through the receipts made by the labour tribunals than is the case with the ordinary courts of law. The reason is quite obvious, since one of the objects of the special labour judiciary is to reduce the costs of the proceedings for the litigants. In most cases there is no stamp duty on the documents relating to the judicial procedure before the labour tribunals. Nor is there a registration fee for the legal validation of the agreements arrived at by mutual understanding between the parties. In many cases, however, the tribunal may order one of the parties or both of them to pay the costs of the action and in other cases of infringement of the law the labour tribunal may impose penalties which accrue to the authorities and so make good the deficits occasioned by the functioning of the labour judiciary.

CHAPTER IV

JURISDICTION OF THE LABOUR COURTS

To determine the jurisdictional powers of the labour courts is admittedly the most important task entrusted to the legislator who is called upon to lay down provisions for the establishment of a labour judiciary. Apart from the difficulties of a constitutional or administrative character with which he will be confronted, it is necessary for him to distinguish between judicial labour tribunals and other bodies, such as conciliation and arbitration committees, which are also designed for the adjustment of labour disputes. He must be in a position to tell the difference between the different types of disputes which come within the purview of those different institutions, and as much as possible avoid giving rise to conflicts of jurisdiction of these same institutions between themselves or with the regular courts of law.

In this chapter an effort will be made to give a short explanation of the idea at the basis of the labour judiciary and of the nature of the disputes about rights and disputes about interests which come within their competence and to indicate the different systems in force as they emerge from the analysis of the laws given in the monographs set out in the second part of this study. Finally, the competence of the labour courts with regard to subjects, territory or persons will be considered and the possibility of its exclusion by the agreement of the parties will be examined.

§ 1. — Description of the Labour Judiciary

The nature of the labour judiciary can best be explained by comparing it briefly with the ordinary judiciary and conciliation and arbitration procedure.

There are three essential features which are common to the labour judiciary and to the ordinary courts of law. In the first place, either party to a dispute may cause the other to be summoned for trial before the court, whether a labour court or an ordinary court of law, although no previous agreement to that effect has been concluded between the parties. It is the first element of

compulsion in a system of judicial procedure. It is also the *first means of differentiating* between judicial procedure and *ordinary conciliation or arbitration procedure*, where compulsion must rest on a special law or on the previous agreement of the parties.

The second common characteristic of the labour and regular judiciary is that once a dispute has come before the competent tribunal, the latter is at liberty to render a binding decision without regard to the consent or agreement of the litigants. In this respect judicial procedure differs from most forms of voluntary conciliation or arbitration procedure. In fact the parties to a dispute who accept of their own free will to submit their dispute to the latter method of procedure usually agree to abide by the decision of the conciliator or arbitration board ; but there are also countries where the law imposes arbitration and declares the awards binding [1]. Such is the case, for instance, in Australia and New Zealand, where compulsory arbitration is in force.

The third essential feature of a judicial system is that the decisions rendered by the judicial body may be compulsorily enforced against the party at fault. Here again the labour courts share the powers of the regular courts of law, since in most cases the decisions of the labour tribunals are enforceable by the same or by similar measures as are applicable in the execution of the judgments of the ordinary courts. There are on the contrary few instances where the awards of conciliation and arbitration boards can be imposed on the party against whose will they are given and this is particularly so in the case of decisions for the adjustment of collective disputes based on the interests of the parties [2].

The labour judge therefore exercises the same powers as the judge in the regular courts of law, that is, he declares what the law is and interprets it with a view to its application, which may be subject to sanctions. Such powers differ entirely from those of the conciliator or arbitrator, whose task it is to bring together litigants whose divergent views arise out of different interests which are not based on a pre-existing right. Hence the distinction between " disputes about rights " and " disputes about interests " which may be described as follows :

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Conciliation and Arbitration in Industrial Disputes*, pp. 8 *et seq.* Studies and Reports, Series A (Industrial Relations), No. 34. Geneva, 1933.

[2] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 113 *et seq.*

A " dispute about rights " [1] (or justiciable dispute) concerns the interpretation or application of a pre-existing right which may be based either on an express provision of the law or on a stipulation contained in a private contract or in a collective agreement. The interpretation of such a right normally falls within the jurisdiction of a judge, in this case the labour judge.

A " dispute about interests " (or non-justiciable dispute), on the other hand, does not concern the interpretation of a right already acquired by law or contract, but arises out of a claim for the modification of an existing right or the creation of a new right. That type of dispute normally comes before a conciliator or arbitrator.

It follows from the above definitions that the first criterion of the competence of the labour judge is not the number of parties to a dispute (individual dispute or collective dispute) but the nature of the dispute. However, the legislator in the great majority of countries (the Scandinavian countries being the only exceptions) has not used that terminology when legislating on the labour courts. He merely speaks of individual disputes and of collective disputes.

As a rule the term " individual labour dispute " is used to designate a " dispute about rights", since an action brought by one person is usually connected with an alleged existing right of that person, although this presumption of fact does not exclude the possible existence of an individual dispute about interests. But this latter type of dispute is usually left for adjustment to the separate negotiations of the parties and to certain bodies to which they submit voluntarily for the determination of new rights.

The term " collective labour dispute ", on the other hand, is more often associated with the idea of a " dispute about interests ", that is, of a dispute concerning a collective change in conditions of work and the establishment of new rights. When it is intended to refer to collective disputes relating to existing rights, explanatory words are added, for instance, one speaks of collective disputes about acquired rights, or collective disputes based on an already existing collective agreement. But more often than not national laws on the labour courts speak of collective disputes merely, so that the meaning of the term used has to be inferred from the whole text.

[1] For a definition of justiciable and non-justiciable disputes in international law, see LAUTERPACHT : *The Function of Law in the International Community*, pp. 353 *et seq.*

§ 2. — Different Systems of Labour Courts

It follows from what has been said above that the same individual may be invested with dual functions, those of an arbitrator and those of a judge, if the law entrusts him with the settlement of disputes about rights as well as of disputes about interests. In fact the legislator, for reasons of pure administrative expediency, has often invested judicial bodies with conciliation and arbitration functions on the one hand, and on the other hand has given judicial powers to conciliation and arbitration bodies. But as the latter bodies have already been dealt with in a previous study [1], these pages are confined to a description of the functions of the judicial tribunals, as they can be learnt from the legislation on the labour courts, which has given rise to the various systems indicated below.

A first classification may be made of the countries where the law gives the labour courts jurisdiction with regard to individual disputes only. These are Belgium, Czechoslovakia, Chile, Danzig, France, Germany, Italy, Peru, Poland, Spain, eleven cantons of Switzerland, and Yugoslavia.

In a second category may be classed the countries where the labour courts are given jurisdiction with regard to individual or collective disputes about rights. These are Denmark, Norway, Sweden, the Union of Soviet Socialist Republics, and Venezuela. (In Denmark, Norway and Sweden a central labour court is entrusted mainly with the adjustment of collective disputes about rights, provided these are based on an existing collective agreement. It is in the Scandinavian countries that the distinction between disputes about rights and disputes about interests has been most definitely drawn and made use of in determining the respective competence of the labour courts and of the conciliation and arbitration authorities.)

In the U.S.S.R. the labour courts are competent to judge certain classes of individual disputes and collective disputes about rights in regard to which the worker has the option of laying his claim either before a Joint Committee or a labour court. The failure of a Joint Committee in such circumstances to effect a satisfactory settlement would leave the competence of the labour courts unimpaired.

[1] Cf. INTERNATIONAL LABOUR OFFICE: *Conciliation and Arbitration in Industrial Disputes.* Studies and Reports, Series A (Industrial Relations), No. 34. Geneva, 1933.

In Italy collective disputes are handled by the labour sections of the regular appeal courts before which are also brought appeals against the decisions of the labour courts of first instance.

Thirdly, there are the countries where the labour courts are invested with a wide jurisdiction including individual disputes and collective disputes regardless of whether the latter are disputes about rights or disputes about interests. In this class belong Mexico, Portugal and Rumania.

The new Portuguese law on the labour courts gives these courts jurisdiction not only with regard to the interpretation and application of collective agreements, but also with regard to their amendment, prorogation or adaptation to change in economic conditions and even in regard to the conclusion of new agreements. This obviously includes collective disputes relating to non-existing rights. The labour courts are also empowered to serve as arbitration or conciliation agencies in respect of all matters which fall within the scope of their judicial functions.

The Rumanian Labour Courts Act of 1933 likewise empowers the labour tribunals to deal not only with collective disputes relating to existing agreements, but also with disputes arising out of negotiations between the parties for the conclusion of either individual or collective contracts. They may, therefore, be said to possess the widest jurisdiction, inasmuch as they are competent to deal with disputes about interests as well as disputes about rights, regardless of whether the disputes are individual or collective.

§ 3. — Competence with regard to Subject Matter

The laws actually in force in the various countries generally extend the jurisdiction of the labour courts to disputes about rights, and sometimes to disputes about interests, which arise out of employment relations in industry and commerce. There are only a few countries, namely, France, Portugal and certain cantons of Switzerland, where the labour courts are competent to deal with disputes in agricultural undertakings.

In order to understand the nature and variety of labour disputes which come before the special labour courts, it would be necessary to look at the chapter on the competence of the labour courts in each of the national monographs which are given in the latter part of this study and to consult the surveys of legal decisions

on labour questions published in different countries, such as Belgium, Czechoslovakia, France, Germany, Portugal and Rumania, and more particularly the *International Survey of Legal Decisions on Labour Law* published each year by the International Labour Office since 1925. The *Survey* comprises the most important decisions of the courts in connection with labour law in the United States of America, Great Britain, France, Germany and Italy.

The classification of labour disputes to be found in that survey shows that labour disputes may be the object of judicial decisions based on international public or private law, constitutional law, or on custom, statutory labour law, or again on general principles of labour law, rules and regulations issued by works councils, and collective agreements as well as private contracts of employment. And the judgments rendered may bear on rights and obligations in connection with international labour conventions, freedom of association, the liability of the employer, public policy, or again with the interpretation and application of the laws and regulations on hours of work, the payment of salaries, protection against wrongful dismissal, compensation for industrial accidents, social insurance and other questions[1].

The law on the probiviral courts in France and Belgium specifically reserves disputes arising out of industrial accidents for adjudication by the ordinary courts of law. On the other hand, according to the terms of the law on the labour courts, in Chile, Peru, Portugal and Spain, disputes relating to compensation for industrial accidents fall exclusively within the competence of the labour tribunals.

There are also countries where the labour tribunals are competent not only in regard to the disputes specified by law but also in regard to any dispute which the litigants agree to submit to them. This is the case for instance under the law relating to the labour courts in Spain. The Belgian law also stipulates that, when the parties to a dispute have so agreed, the probiviral courts may settle by conciliation or arbitration disputes which otherwise would not fall within their competence. This includes even disputes between employers alone which do not otherwise fall under the jurisdiction of the probiviral courts. In Germany disputes between private corporations and their

[1] Full details concerning the subjects which fall within the competence of the labour courts in the various countries are given in the section entitled " Competence of the Courts " in the national monographs which follow.

statutory representatives may be submitted to the labour courts when it is so agreed by the parties.

In Denmark the Central Labour Court must give its consent before it can be seised of disputes other than those referred to in the law to which it owes its existence.

The labour courts may also be given jurisdiction as a result of a decision of an ordinary court of law. In Czechoslovakia, for instance, the labour tribunals decide their own competence *ex officio*. But just as they may come to the conclusion that a certain matter pertains to the jurisdiction of the ordinary law-courts, the latter are likewise empowered to decide that such and such a dispute belongs to the jurisdiction of the labour courts. In such a case the labour tribunals might be entrusted with litigation which otherwise they would have remitted to the competence of the ordinary courts of law. In this connection it is interesting to note that generally the jurisdiction of the labour courts excludes the jurisdiction of the ordinary courts of law and, as is laid down in the Polish Act, no agreement of the parties will confer on the ordinary courts jurisdiction in regard to matters which are specifically assigned to the jurisdiction of the labour courts.

Apart from the adjustment of labour disputes the labour tribunals are sometimes given other tasks. In Belgium and France, for instance, they are entrusted with the responsibility for maintaining property rights in industrial designs and models. They may also be required to give the Government authorities advisory opinions on questions or schemes relating to employment.

The labour courts are not only competent to impose disciplinary fines, as was pointed out above, against assessors who fail to discharge their functions satisfactorily, but they may in certain countries mete out penalties for other infractions of the laws and regulations. In Belgium, for example, the probiviral courts are competent to impose on employers or employees a fine not exceeding twenty-five francs for acts of disloyalty, serious breaches of professional duty or for " any act likely to disturb the order and discipline of the workshop, office or other place where work is carried on ". The labour courts of Portugal may likewise inflict disciplinary measures on employers or employees " for failure to observe the principles of equity, courtesy, respect and obedience on which their relations to each other should be based ". Again, in Rumania the labour courts, apart from handling disputes based on the relation of employment, judge all infringements

of the statutory provisions for the regulation and protection of employment. The German labour courts are specifically empowered to hear civil actions for unlawful acts connected with employment or apprenticeship.

It may be added here that as a rule the competence of the labour courts, whether in individual or collective disputes, is independent of the amount at issue, although it is an element which may have some bearing on the right of appeal either to the special labour courts of appeal or to the ordinary courts [1]. In France, for instance, when the sum involved in the dispute does not exceed 1,000 francs, the decisions of the probiviral courts are final. If it exceeds that amount, resort may be had to the regular courts, and in a dispute between an employer and his salaried employee, the latter has the right to bring an action in the first instance before the ordinary courts of law if the amount involved in the dispute is more than 2,000 francs. The labour courts in Poland have no jurisdiction when the sum at issue exceeds 10,000 zloty. In Portugal the maximum amount for disputes based on individual contracts of employment is 50,000 escudos in Lisbon and Porto, and only 5,000 in the other districts. The foregoing, however, constitute the only exceptions to the general rule.

§ 4. — Territorial Jurisdiction

In a few States the law does not contain any specific rules with regard to the territorial jurisdiction of the labour tribunals. The presumption in such cases is that the rules which obtain for the determination of the territorial scope of the respective courts of law also apply to the labour courts. In Germany and Switzerland this is admittedly the position, but in Germany the labour trustee may in the collective rules issued by himself declare that a certain labour court has jurisdiction in a locality in which it would not otherwise have jurisdiction.

While the territorial jurisdiction of the ordinary courts is based in most countries on the place of domicile of the defendant, other principles are often followed in connection with the labour courts. For instance the various Acts on the labour courts in Belgium, Italy and Yugoslavia stipulate that the claimant has the choice of bringing his action either before the labour court of the

[1] Cf. Chapter V: Appeals, pp. 47 *et seq.*

district where the headquarters of the undertaking are situated or where the work is carried out or paid for. In Czechoslovakia and Poland the claimant is given the same choice plus that of the labour court in the area in which the defendant is domiciled. In France the rule is that the action is to be brought before the court of the district in which is situated the establishment or undertaking where the employee works. But if his work is performed more or less permanently outside the regular work premises, then the action must be brought at the place where the contract of employment was concluded.

The Portuguese law contains detailed rules on the subject, the main principle being that the court of the place where the work is carried out has jurisdiction. But when several defendants residing in different districts are parties to one and the same action, or when the parties to the dispute are employees of the same employer, then the jurisdiction of the courts is determined by the place of domicile of the defendant or of the majority of defendants, as the case may be. On the other hand if the action is brought against an alien the forum of the action is the place of domicile or residence for the time being of the plaintiff. In Rumania a labour dispute may likewise be brought before either the labour court within the area of the defendant's domicile or residence or the court of the place where the work is carried out or paid for. The law of Spain also sanctions the principle that a labour dispute is to be decided by the labour court of the locality where the employment is carried on, unless the parties have agreed, either tacitly or expressly, to submit their case to a different labour court. But when no such agreement can be shown and the work is carried out over an area which covers the districts of two or more labour courts, then the rule of the place of domicile of the worker or of the place where the contract of employment was entered into is invoked. In Belgium legal precedents have established that the provisions of the Probiviral Courts Act, 1926, concerning the territorial jurisdiction of the probiviral courts are not a matter of public policy, and consequently litigants may validly agree to submit a dispute between them to a particular probiviral court [1].

It will be noticed that in each of the foregoing illustrations the object of the law has been to give the employee, who has a complaint to submit to the labour courts, advantages which

[1] Cf. *Jurisprudence du louage d'ouvrage*. Brussels, Year X, No. III, 1938, pp. 67 *et seq.*

are not granted to the plaintiff before the ordinary courts of law. By giving him the option of instituting legal proceedings before the labour tribunal of the district where he works the law makes it possible for the wage-earning or salaried employee to exercise his rights before the labour tribunal which not only is more *accessible to him but which* moreover offers him the assurance that his conditions of work in the locality will be best understood and given the greatest consideration.

It might be added here that in certain countries, for instance in Rumania and Spain, the law on the labour courts prescribes that, in the districts where there are no special labour tribunals, disputes which ordinarily would fall within the competence of the labour courts are handled by the ordinary courts of law which must then apply the rules of procedure governing the proceedings before the labour courts in other parts of the country. There are also countries where, as in Hungary, although special labour tribunals do not exist in any part of the country, nevertheless labour disputes when brought before the ordinary judiciary are subject to rules of procedure intended specially for the prompt settlement of labour cases.

§ 5. — Competence with regard to Persons

Although only labour disputes, or at any rate disputes closely connected with labour matters, may come before the labour tribunals in the various countries, the parties who may be involved in such disputes include practically all individuals or legal persons which may be a party to an action before the ordinary courts of law. It is in fact quite conceivable that those who may have under general law rights which require the protection of the regular courts may also have rights based on labour law to be enforced by the special labour tribunals. What is more, these same individual or corporate bodies may come before the labour courts not only to claim the enforcement of acquired rights but also to seek the approval of the courts for the creation of new rights, as happens in the settlement of disputes about interests.

In a general way the parties to an action before the labour courts are either employers, employees and apprentices, or trade associations entrusted with the protection of employment relations[1], and Government departments responsible for the application

[1] Cf. monograph on Italy, pp. 112 *et seq.*, and monograph on Sweden, pp. 175 *et seq.*

of labour laws[1]. The employer may be either an individual or a corporate body. The corporate body may be either a private undertaking or a Government undertaking, a trade association or a federation of associations. Likewise, one or more employees or a trade union or a federation of trade unions may be a party to an action before the labour tribunals.

The dispute may concern the relations between employers and their wage-earning or salaried employees and apprentices, or those between the employees among themselves. There are extremely few cases where the law, as in Mexico, gives the labour tribunals jurisdiction in disputes between employers alone. The reason must be that such disputes are seldom related to employment contracts or to matters closely connected therewith. They cannot therefore be considered as labour disputes and for that reason fall under the jurisdiction of the regular courts of law.

In certain States the law on the labour courts describes the categories of persons designated by the terms " employer " and " employee ". The Belgian Act on the probiviral courts, for instance, defines the word " employer " as " any person who usually employs one or more wage-earning or salaried employees either throughout the year or at certain seasons of the year in the exercise of a trade or in the exploitation of an undertaking other than an undertaking in agriculture or forestry ". The Act then gives a list of other persons who are deemed to be employers for the purposes of the legislation on the labour courts. It comprises organisations or institutions not carried on with a view to profit, but specifically excludes State institutions and public administrative departments. The expression " wage-earning employee " is used in the Act to signify any person who usually performs *manual* work on account of an employer, whereas the " salaried employee " is the person who usually performs *intellectual* work on account of an employer. The law then enumerates the various persons who belong to these two categories. But the intellectual worker does not come under the jurisdiction of the probiviral courts if his annual remuneration exceeds 24,000 francs.

Definitions practically identical with the above are also to be found in the Rumanian Labour Courts Act. While the general definitions contained in these two Acts correspond to the meaning usually given to these terms in other States, the exact significance of the terms is often to be deduced, for lack of precise definitions,

[1] Cf. Chapter V : Institution of the Proceedings *ex officio* by the Courts or by the Public Authorities, pp. 31 *et seq.*

from the general content of the law, particularly the provisions which deal with the different subject matters that fall within the competence of the labour tribunals.

The precedents set by the labour courts also serve to clear up certain points which the legislator has not been able to define satisfactorily in the legislative texts. On the other hand it may happen that, in the same country, the legislator gives in a text of law a definition of the terms " worker " and " employee " which is incompatible with the definition given of these same terms in another law, according as he wishes or not to grant to all the same persons the advantages offered by the social laws involved. For instance the Belgian Act of 10 March 1900 on the labour contract includes workshop foremen and foremen among the " wage-earning employees ", whereas the Probiviral Courts Act of 9 July 1926 includes these same persons among " salaried employees " [1]. The rights and obligations of such persons will necessarily depend upon the definition which the courts accept when applying the various social laws.

§ 6. — Exclusion of the Jurisdiction of the Labour Courts by Individual or Collective Agreement

Where there are labour courts, their jurisdiction usually excludes that of the ordinary courts of law, even though the litigants desired to have their differences settled by the regular courts. The purpose of the legislator in providing for the establishment of special labour tribunals would naturally be frustrated if under the guise of an agreement the employer could exert pressure on his employees in such a manner that they would feel bound to bring their complaints before the ordinary courts of law, thereby incurring greater expense and an unnecessary loss of time. But the position is different when the parties, with the approval of the law, agree to have their differences adjusted by some special agency such as a board of conciliation or arbitration, or a single arbitrator, whereby a settlement may be arrived at under even more favourable conditions than by the labour courts.

Even in the countries where the law requires that the proceedings before the labour courts must begin by a preliminary

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[1] Cf. " La loi de 1926 est-elle une loi de compétence ? " by Jacques Dalemans in *Jurisprudence du louage d'ouvrage*, Year IX, No. 5, pp. 135 *et seq.*

attempt on the part of the chairman of the court to effect a settlement by agreement between the parties, provision is often made allowing the parties to submit their differences to the mediation of a separate agency. The law may allow this to be done either as a result of a bilateral agreement between the parties or of a collective agreement or again, as in Germany, by reason of the collective rules which are issued by the labour trustees and take the place of collective agreements. But in Germany the jurisdiction of the labour courts is not excluded unless special arbitration is prescribed by collective rules. If the parties have themselves agreed to submit the dispute to a conciliation board, or to refer important questions of fact to the decision of a board of experts as permitted by law, the competence of the labour courts is excluded only to the extent that they would be bound by the findings of the experts on the questions of fact.

In Italy, on the contrary, the jurisdiction of the labour tribunals may be excluded by the agreement of the parties to submit the dispute to arbitration in accordance with the relevant provisions of the Code of Civil Procedure, which means that the agreement must be one relating to a dispute which has actually arisen. But a provision in a collective agreement stipulating that individual disputes which arose out of the application of the collective agreement were to be settled by arbitration would be null and void.

In Switzerland, the competence of the probiviral courts to decide labour disputes is subject to the condition that the rights and obligations involved must be based on private law and not merely on public law. For that reason disputes relating to the employment relations between civil servants and the Government authorities fall outside the scope of the probiviral courts.

In Czechoslovakia the labour courts have no jurisdiction when the dispute is referred to an arbitrator in compliance with a collective agreement or some other arrangement made by the organisations of employers and employees to which the parties belong, or when special bodies have been set up by law for the adjustment of certain disputes connected with the mining industry or State undertakings.

Likewise, in Poland, the parties may by agreement submit a dispute already existing and falling within the competence of the labour courts to the jurisdiction of some conciliation or arbitration board set up by collective agreement. Moreover, the labour courts have no jurisdiction with regard to disputes relating to membership in social insurance institutions, when these are

reserved by law or by the constitution of these institutions for settlement by special tribunals, by the administrative authorities or by arbitration agencies. But the parties are not entitled to confer on the ordinary courts of law jurisdiction over matters which fall within the competence of the labour courts.

In Norway and Spain the mere agreement of the parties to submit the dispute to an arbitrator will suffice to exclude the jurisdiction of the labour tribunals. The same is true with regard to the competence of the Central Labour Court in Sweden, provided the agreement of the parties does not nullify the effect of a previous collective agreement concluded between the trade organisations to which the parties belong.

In the other States the laws on the labour courts do not stipulate the extent to which their jurisdiction can be restricted by submission of the dispute to conciliation and arbitration in consequence of either a bilateral or collective agreement which is binding on the litigants. It may however be assumed that in the absence of a specific law prohibiting recourse to arbitration, an arbitration agreement will be valid as against the jurisdiction of the labour courts and a settlement arrived at as a result of conciliation or arbitration proceedings will be given legal force so long as the circumstances by which it is surrounded are fair, equitable and in nowise contrary to general principles of law. This is the theory which seems to have prevailed in Belgium, for example, although legal precedents have not been uniform [1].

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[1] On this point see SNEYERS : " De la clause arbitrale devant les Conseils de Prud'hommes " in *Jurisprudence du louage d'ouvrage*, Brussels, Year VIII, No. VII, 1936, pp. 193 *et seq.*

CHAPTER V

THE PROCEDURE

Since one of the objects of the special labour tribunals is to offer to litigants the possibility of a more speedy settlement of their differences, the legislative acts which provide for the establishment of such labour courts in the various countries generally contain provisions making the procedure more simple and more expeditious than in the case of the regular judiciary. There are nevertheless many instances where the proceedings before the labour courts are also governed to a greater or lesser extent by the rules which govern the proceedings before the ordinary courts. For that reason there must be numerous occasions when the practice of the labour courts in the different countries is more or less identical according to the degree of similarity between their judicial systems. It would in fact be necessary to compare the regular judicial systems of some countries in order to make a comparative study of certain details of the procedure in force before their respective labour tribunals. But such a task would obviously go beyond the limits of this study. To point out the characteristic features of the procedure in force under the particular laws on the labour courts will suffice here. This may best be done by treating the salient points under the following headings : Institution of the proceedings *ex officio* by the courts or by the public authorities ; the parties to the proceedings ; the representation of the parties ; preliminary conciliation efforts ; the trial of the case ; the judgment ; the execution of the judgment ; appeals.

§ 1. — Institution of the Proceedings "ex officio" by the Courts or by the Public Authorities

As was pointed out in Chapter IV above, the labour courts in all countries are competent to deal with certain individual labour disputes, whereas it is only in some countries that they are also given jurisdiction to handle certain classes of collective disputes. For that reason the number of individual disputes

brought before the judicial labour tribunals is on the whole larger than the number of collective disputes. Consequently there would be less occasion for the public authorities than for the individual or trade association to institute proceedings before the labour courts, since the State is mostly concerned with collective disputes which may lead to a disturbance of public peace and order. This is particularly the case with regard to collective " disputes about interests " which are more apt to affect public interests and therefore are frequently referred for adjustment to the official conciliation and arbitration machinery in existence[1].

There are nevertheless a few countries where the law stipulates that the judicial machinery of the labour courts may be set in motion either by a State authority or *ex officio* by the courts. For instance, in Chile, the labour inspectors, who are representatives of the State, must notify the labour courts of any infringements of the provisions of the Labour Code by an employer or a manager, director or head of an undertaking, who, after a hearing, may be held jointly liable and sentenced to pay a fine. Also in the case of industrial accidents, the employers must within five days notify the competent judge, who thereupon orders that an enquiry be made, summons the parties and after hearing them or their representatives assesses compensation on the basis of the medical report.

A similar provision on industrial accidents may be found in the Portuguese law but with this difference, that in Portugal the employer is given only forty-eight hours in which to notify the labour court. The Portuguese Decree of 15 August 1934 also gives a list of questions in regard to which the labour courts must exercise their jurisdiction *ex officio*. Since there is a representative of the public prosecutor's department on the staff of each labour court, its *ex officio* intervention may be at the instigation of that department. The list includes among other items " disputes relating to hours of work and in a general way questions relating to the compulsory provisions regulating the conditions of employment ". This is clearly a very comprehensive clause and it would appear to impose on the labour judiciary the obligation to keep a watchful eye over the observance of a great many labour regulations. The Decree even imposes on the courts the further duty of notifying the police authorities when the latter's intervention is warranted by suffi-

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 60 *et seq.*

ciently grave facts connected with the failure of employers and employees to observe the principles of equity and courtesy in their relations to one another. The public prosecutor is also given the right to intervene in any action based on collective agreements and to propose the amendment or prolongation of the agreements or the conclusion of new ones. He may also, as in Italy and the U.S.S.R., lodge an appeal in all cases in which the State has an interest[1].

Provisions like the foregoing are not to be found in the older legislative enactments on the labour courts. In some respects they are paralleled only by the recently created Social Honour Courts of Germany, which are not labour courts in the strict sense of the term but are nevertheless often resorted to by the labour trustees, who are representatives of the State, to ensure mutual good relations between employer and employed.

§ 2. — The Parties to the Proceedings

(a) Individuals

In all the countries which possess a special labour judiciary proceedings may be instituted before the labour courts by means of a written request. The proceedings before the labour courts are usually begun by an application in writing addressed by one of the parties to the chairman of the court. In some countries, for instance in Chile, France, Germany, Portugal, Rumania, in several cantons of Switzerland and in the U.S.S.R., the application may even be made orally. In France, Germany and Portugal the parties are allowed to come voluntarily before the courts on any court day to take advantage of the oral procedure. Again, in other countries, as, for instance, Czechoslovakia, the courts fix certain regular court days on which the parties may appear without summons for the trial of a case. Otherwise the chairman, after examining the application laid before him either orally or in writing fixes the date and place for the hearing and summons the parties.

At this point there are usually slight variations in the procedure followed in this or that country. But as a rule witnesses and experts are not summoned for the first hearing, which is nearly

[1] See below *Appeals*, p. 47.

always one for the purpose of attempting a settlement by agreement between the parties.

A characteristic feature of the judicial labour system is that as a rule the parties to a labour dispute are not only at liberty to appear in court and plead their own case, but in principle their presence is required, particularly for the special conciliation proceedings which take place in the earlier stages of the procedure. The reason is that the chairman of the labour court in charge of the conciliation procedure, or even the conciliation committee which may have been formed within the labour tribunal, will be in a better position to explore all the possible means of effecting a settlement by mutual agreement of the parties if the parties themselves take part in the preliminary conciliation discussion. Their participation at the trial is no less advantageous, since the labour courts in most countries are empowered to adjust the dispute amicably at any stage of the proceedings and no matter how wide the powers given to representatives of the parties the influence exerted by the court or its conciliation committee is always greater and more beneficial when the litigants actually take part in the negotiations.

The law also allows the chairman a definite period of time in which to set the judicial machinery in action. In Chile, for instance, the application must be served on the defendant by the clerk of the court or a constable within five days from the time when the application was received, and the defendant is asked to appear in order that a date and hour for the preliminary hearing may be fixed. Generally the law specifies that the appearance of the parties must take place within a certain period of time or at the earliest possible moment, the purpose being always to hasten the various stages of the procedure and effect a settlement within the shortest time possible.

(b) Associations

The trade organisations to which the parties belong must sometimes be consulted before the litigants can go before the courts. Under Italian law notice of a dispute must first be given to the legally recognised association for the category to which the complainant belongs. And it is that association which must in the first place attempt an adjustment of the dispute in collaboration with the legally recognised trade association for the category to which the other party belongs. The agreement

which may be reached acquires executory force upon being signed by the parties and the secretaries of the associations. If no agreement is reached, then the association notifies the complainant who, after the expiration of a period of two weeks, is entitled to institute judicial proceedings. The trade associations are also entitled to intervene at any time in judicial proceedings which are connected with the non-fulfilment of collective agreements or of rules which have the force and effect thereof [1].

A similar situation arises in the U.S.S.R., where certain classes of disputes must first be referred to Joint Committees set up in each undertaking for purposes of conciliation, and it is only when a Committee has failed to effect a settlement that such disputes can be submitted to the labour courts [2].

The procedure in the Scandinavian countries is again different. There the central labour court deals only with individual and collective disputes which are based on an existing collective agreement and consequently the trade organisations which concluded the agreement must not be left out of account. In Denmark, in cases of strikes or lock-outs, the complainant must, within five days from the time the notice of the declaration of a strike or lock-out is received, send a protest by registered letter to the organisation which has declared a stoppage of work before judicial proceedings can be started before the Central Labour Court. The Central Court in Norway cannot deal with a case unless the application shows that the parties have previously made some effort to adjust the conflict by conciliation and more often than not the parties to a dispute relating to a collective agreement are the trade associations. As already pointed out, a Swedish employers' or employees' association which has concluded a collective agreement may bring an action before the labour court on behalf of one or more of its members, but the members cannot themselves bring a separate action before the court unless they can show that the association to which they belong has refused to do so on their behalf. Moreover, if the action is one against a member or a former member of a trade association, it must also be brought against that association, which may enter a defence if the defendant does not do so himself. The procedure is the same whether the collective body is a federation of associations or a single association. Sweden may then be said to be the

[1] Cf. monograph on Italy, pp. 112 *et seq.*

[2] Cf. monograph on the U.S.S.R., pp. 186 *et seq.*

only country where the law requires the trade association to take legal proceedings before the labour tribunal on behalf of its individual members, although legally recognised trade associations may in all countries bring an action for the protection of the rights of the organisation as such.

§ 3. — The Representation of the Parties

Generally speaking, when the law on the labour courts gives a party to a dispute the right to bring an action it also permits him to appear in person before the court and conduct the proceedings himself, in other words to plead his own case. But there are obvious instances when the plaintiff or defendant in an action is unable to do so personally for reasons either of health, age, forced absence or again when the litigant is a corporate body. In such cases the law always allows the party to act through a representative in accordance with well-defined rules which vary slightly from State to State.

Usually a person may be represented in an action before the labour court by one of his relatives or colleagues, or, as we have already seen, by the trade association to which he belongs, and if the party is a firm or undertaking, then representation may be effected through a partner, a manager, a salaried employee or some other person authorised by law. Trade associations are generally represented by one of their officials. But restrictions are often imposed on the appointment of advocates as representatives. As much as possible the law tries to do away with the intervention of professional lawyers before the labour tribunals. In Czechoslovakia, for instance, the sum at issue must reach a certain amount before an advocate is admitted as representative. Only employers or workers can act as representatives of the parties before a conciliation committee of the probiviral courts under Belgian law. And while advocates, solicitors or other persons approved by the trade chambers may conduct the proceedings at the trial on behalf of the parties, the latter may at any time be compelled by the probiviral court to attend in person. The parties to a labour dispute can also be compelled to attend personally at the trial before the Italian labour tribunals.

In Chile and Czechoslovakia the labour courts have the right to specify the fees which may be claimed by advocates. The object there is undoubtedly to safeguard the workers from having

to pay fees which are either excessive or disproportionate to the amount involved in the dispute. A law adopted recently in Peru prescribes the institution in the Department of Labour of a free legal service to advise the workers and represent them before the courts in case of labour disputes.

In countries like Denmark and Norway the Central Court may even impose a limit on the number of advocates whose services may be retained. Professional pleaders are not as a rule admitted before the German labour courts of first instance. But the parties may be represented before these courts by the officials of the legal consultation offices of the Labour Front, or again by an advocate or any person authorised by the chairman of the labour court, when the circumstances are such that the legal consultation offices do not intervene. On the other hand, in the appeal labour courts the parties must be represented by members of the German Bar.

In the countries where there are no special labour tribunals of appeal, the law generally does not contain special rules for the representation of the parties in a labour dispute which is appealed to the regular courts. The assumption then is that in this regard the same rules apply for labour as for other disputes. The only exception is France, where the law stipulates that the parties may appear in person even before the regular courts serving as courts of appeal in labour matters.

It is interesting to note that the various laws on the labour courts often contain special provisions for the protection of the rights of women and minors. In Belgium a guardian or trustee must be appointed to replace the absent father or guardian of a minor, while a married woman may be authorised to sue or to be sued. In France this same authorisation may be granted to either the minor or the married woman. Similar provisions for the protection of minors may be found in the labour laws of Italy, Portugal and Rumania. The labour tribunals in Belgium, France and Italy will also grant free legal assistance to a party who can show that he does not possess the means required to retain the services of an advocate. In this respect the law on the labour courts has borrowed from the procedure *in forma pauperis* which in many countries applies to actions before the ordinary courts.

In Mexico the law provides for the creation of a federal office for the protection of labour. It is composed of the required number of officials to supervise the effective administration of justice by the labour courts, to advise the employees or their

trade associations, to institute the necessary proceedings and to represent the workers in dispute with their employers. In the performance of its duties the federal office for the protection of labour may propose amicable arrangements to the parties concerned for the adjustment of their disputes and record in a certified minute such results as are thereby obtained.

Mention should also be made here of the fact that in certain countries where there are no special labour courts, the law contains special provisions with regard to the representation of litigants and the assistance to be given to them in proceedings concerning labour disputes which have come before the ordinary courts. Such is the position, for instance, in Argentina [1] and Brazil [2] under the regulations relating to the enforcement of the laws concerning industrial accidents. In other countries the local trade union councils appoint legal advisers to assist their members and advise them as to what their rights are. But space does not make it possible to deal in this study with the countries which do not possess a special labour judiciary.

§ 4. — Preliminary Conciliation Procedure

Reference has been made above to the countries where an effort must be made by the parties to a labour dispute or by their respective trade organisations to adjust the conflict by conciliation as a condition precedent to any sort of action being taken before the labour courts. But the conciliation procedure to be considered here is that which takes place under the auspices of the labour courts. To that end separate conciliation committees are sometimes constituted within each section or chamber of a labour court, although in the majority of cases the chairman of the court is alone entrusted with the responsibility of bringing the parties together with a view to avoiding unnecessary litigation.

In Belgium the law makes provision for the setting up within each chamber of conciliation committees composed of a representative of each of the parties to the dispute and selected from among the employers, and the wage-earning or the salaried

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[1] See section 77 of the Labour Code which was promulgated on 2 January 1935. (*Legislative Series*, 1935, Arg. 1.)

[2] See section 137 of the Constitution of the United States of Brazil which was promulgated on 10 November 1937. (*Legislative Series*, 1937, Braz. 2.) See also MINISTERIO DO TRABALHO, INDUSTRIA E COMERCIO : *Projeto de lei orgânica da justiça do trabalho*. Rio de Janeiro, 1938.

employees' groups as the case may be. The litigants are summoned before the conciliation committee by an ordinary letter from the clerk of the court. There are legal precedents to show that conciliation, being a matter of public policy, cannot be renounced [1]. When conciliation fails the committee may even judge a case on the merits and render a final judgment, if the amount involved in the dispute does not exceed 200 francs.

Conciliation committees are set up on the same basis in the probiviral courts of France, Poland and Switzerland, the only essential difference being that in the last two countries the conciliation committee cannot under any circumstance deliver a judicial decision, either with or without the consent of the parties ; whereas in France, if conciliation fails, the court may, with the agreement of the parties, render a judgment immediately; otherwise the case is adjourned until the next session. In Poland the conciliation proceedings are adjourned for a week if they do not prove successful immediately but the prospects are hopeful.

When the law does not prescribe conciliation before a committee, it usually stipulates that the first session of the labour tribunal must be held before the chairman alone for purposes of conciliation. This is the case in Chile, Czechoslovakia, Denmark, Germany, Italy, Poland, Portugal, Rumania, Spain and Yugoslavia. In each of these countries there are, as might be expected, certain differences in the details of procedure, but the general principle is the same : to adjust the conflict without unnecessary litigation.

In certain countries the chairman may even decide upon the admissibility of the claim, the competence of the court, or render a final decision on the ground of default, acknowledgment or withdrawal of the claim by one of the parties. He may also judge the case on the merits if the parties agree thereto. This is the case in Czechoslovakia, Italy, Yugoslavia, Germany and Portugal, except that in Germany and Portugal, the chairman has no authority to judge a case on the merits even if the parties have given their consent.

The procedure is somewhat different in Mexico, where labour questions are first dealt with by the Conciliation Boards, which must endeavour to settle the dispute by conciliation only. But if they fail in their task they are under an obligation to remit the case to the competent Conciliation and Arbitration Boards, which ultimately may issue an award having executory force.

[1] Cf. *Jurisprudence du louage d'ouvrage*, Brussels, Year IX, No. II, p. 35.

In all the above cases the agreement reached by the parties in the course of the conciliation proceedings acquires force of law when it receives the approval of the labour court, or when it is signed by the parties, as in Belgium and Rumania, or by the parties and the chairman of the court, as in Chile and Italy, or again when it is signed by the parties and the assessors, as prescribed under the law of Poland.

When all conciliation efforts have failed the case is brought up for trial.

§ 5. — The Trial

When the preliminary conciliation proceedings fail to bring about a satisfactory adjustment of a labour dispute the matter is automatically referred for settlement to the court, sitting in plenary session or in chamber, according to the system in force in the particular country. The law, as in Czechoslovakia, Germany and Rumania, sometimes specifies that it is the chairman's duty, upon failure of the conciliation procedure, to summon the parties, the witnesses and the experts for a fixed date and if possible to make such preparations as will permit the case to be decided in one sitting. Generally the dispute comes up as a matter of course for one of the ordinary sessions of the courts. In Belgium, for instance, ordinary sessions of the probiviral courts are held twice a month, whereas under Portuguese law ordinary sessions are to be held once a week. The length of the sessions will naturally vary according to the amount of work which may have accumulated. In other cases special sessions may be held and the members of the court will have to be specially convened for a fixed hour and date.

The period of time which is allowed to elapse between the closure of the conciliation proceedings and the opening of the trial varies from country to country. As a rule it must be the shortest possible, but there is one exception, in the case of Spain, where the law on the labour courts stipulates that at least three days should separate the conciliation from the judicial procedure, the purpose being to give the parties that much more time to reconsider offers which they refused at the preliminary negotiations.

In most countries the trial in a labour court is very similar to a trial in the ordinary courts of law. But the procedure as a rule is more summary. The time-limits for submitting the various

pleas may even vary before the one court if the sum at issue is of more or less importance. The Portuguese law on the labour courts offers illustrations of this. In many countries the rules of procedure also impose a time-limit for the production of evidence. A provision to that effect is obviously imperative if the proceedings before the labour tribunals are to be carried out with more celerity than those before the ordinary courts.

At the beginning of the trial the members of the labour court may usually be challenged on the same grounds as obtain in the case of the judges of the ordinary courts, that is by reason of their having an interest in the dispute, of their relationship to one of the parties, or again when a member of the court is either an employer or an employee of one of the litigants. Objections against the chairman and assessors are as a rule dealt with by the labour court itself, but objections against the chairman are sometimes decided by the ordinary court of first instance.

The questioning of the witnesses and experts on oath by the parties or by their representatives, and the examination and cross-examination of the parties or their representatives and also of the witnesses and experts by the members of the court take place as a matter of course. In order to prevent the discussions from being unduly prolonged the law in certain countries sets a limit upon the number of witnesses who may testify. Investigations may be ordered by the court either *ex officio* or at the request of the parties.

The sessions of the court are generally public. But they may be held in private when it is feared that publicity might endanger public order or the safety of the State, and also when a party avers that his invention or certain secrets of his business or undertaking might be divulged. Furthermore, private discussions offer definite advantages when new conciliation efforts are to be made by the court. For even though the special conciliation procedure has remained unsuccessful, the parties are always at liberty to come to an agreement in the course of the trial. In Rumania and Yugoslavia the rule is that even at the trial the proceedings must begin by a further attempt to adjust the dispute by the mutual agreement of the parties. The probiviral courts in Belgium are not entitled to render a judgment until they have again endeavoured during the trial to bring about a conciliation agreement.

In Portugal the law contains a provision allowing the parties to compromise even during the enforcement of a judgment of

the court. It also specifies that in certain cases the proceedings before the court may be entirely oral. This is presumably the case in all the countries where the action may be begun by an oral statement.

The purpose of the law in all the foregoing instances is obviously to make the procedure as flexible as is compatible with the proper conduct of the proceedings and to increase the possibility of arriving at an arrangement based not so much on the authority of the labour tribunal as on the will of the parties.

§ 6. — The Judgment

Whether the decisions reached during the trial are based on the mutual concessions of the litigants or on the compulsory jurisdiction of the labour courts, they generally take the form of a judgment having the same executory force as a decision of the ordinary courts of law [1]. When the members of the court disagree the decision is taken by a majority vote. In Rumania and Spain, the chairman is given a casting vote in case of an equal division of the assessors' votes. Moreover the law often specifies how many members are required to constitute a quorum. An illustration of this is found in the Belgian Act on the probiviral courts, which stipulates that the chambers of the court must not comprise more than four assessors, but that two assessors, one representing the employers and one representing the employees, shall constitute a quorum.

The judgments of the labour courts may be delivered orally and in private. The Polish Decree on the labour courts lays down that the decisions of the labour tribunals must be put in writing and give the grounds on which they are based whenever a request to that effect is made within three days from the time of their delivery. In several cases the law imposes time-limits for the delivery of the judgment. In Germany and Rumania this period of time is limited to three days after the hearing, although on principle the decision should be rendered at the closing of the trial. In Peru it is three days after the maximum time allowed for the production of evidence. In Spain the award must be delivered not later than the day after the closing of the

[1] For an exception to this rule see the monograph on the United States of America, p. 206.

trial. As a rule in Switzerland the probiviral courts render their decisions at the closing of the trial.

The decisions of the labour tribunals are often given in writing. In Belgium they are signed by the president of the court, the legal assessor and the clerk of the court, in Chile by the judge and clerk of the court, in Germany by the chairman and when they are delivered in the absence of the assessors the clause conferring enforceability is signed by the chairman and the assessors, in Portugal they are signed by the judge alone, and so on. Usually the grounds for the decision are given in the written judgment.

Settling the issue in a labour dispute may mean that the labour courts, like the ordinary law-courts, are to grant damages or impose fines and penalties according to the nature of the case. In certain countries the costs of the action are borne by the person who loses the action. That is the position with regard to the probiviral courts in France and Switzerland. But under other systems the law leaves it to the labour tribunal to decide in each case by whom the costs are to be paid.

An unusual provision is found in the law of Mexico authorising the chairman of the labour tribunal to question the parties during the trial in order to ascertain what arrangement could be made with a view to prompt compliance with the award which is to be made. For instance, an insolvent debtor may be given an opportunity to propose a surety for a definite period of time. The judge would then take such a proposal into consideration when drafting the judgment. Again, since the persons who come before the labour courts are often ignorant of their legal rights and obligations, the law, as in Spain, sometimes entrusts the chairman with the duty of instructing them as to their right to appeal and the time-limit in which it must be exercised. Indications of that nature are sometimes added to the written judgment when it is not delivered in court but is to be communicated to the parties subsequently. In some countries the law also fixes the time-limits for the notification of the decisions of the courts to the parties. In the U.S.S.R., for instance, the litigants must be notified within three days after the decision has been issued. It may be presumed that when the law on the labour courts is silent on this point, the rules which apply to the decisions of the ordinary courts also apply to the judgments of the labour tribunals.

§ 7. — The Execution of the Judgment

The decisions of the labour courts are as a rule enforceable *ipso jure* like the judgments of the ordinary courts, either from the moment that they are delivered in the presence of the parties or, when issued in their absence, from the time when they are communicated to them. There are however several cases where this rule does not hold. In the Labour Courts Act of Czechoslovakia, for instance, it is stipulated that the decisions of the labour tribunals are only declared enforceable at the request of the parties. In Poland, when no request is made by either of the parties to have the judgment put in writing, it acquires executory force from the moment that it is delivered but subject to a deposit of security when the court or the law so requires. On the other hand, the orders of the National Labour Relations Board, in the United States of America, are enforceable only through the agency of the ordinary courts of law, and the latter are not bound by the decisions of the Board.

When a judgment is one against which an appeal may be lodged the procedure varies slightly according to the countries. In Rumania, for instance, although a decision of the court is automatically enforceable from the moment it is issued, its execution may be suspended at the request of one of the parties until the appeal is terminated, provided the party making the request also makes a deposit of security amounting to one-third of the sum to be paid under the judgment. And if that party makes a deposit covering the entire amount at issue, then the court is compelled to grant a stay of execution. When an appeal lies against the decisions of the labour tribunals of Belgium, Switzerland and the U.S.S.R., they only acquire executory force as from the expiration of the period for lodging the appeal, provided neither party has exercised his right to appeal. But in Belgium provisional enforcement to the amount of 800 francs may be granted without deposit of security, and subject to a deposit of security when the sum at issue exceeds 800 francs. On the other hand, the Soviet law contains special provisions to the effect that the judgment is without appeal and immediately enforceable when the claim is one for the recovery by a worker of sums not exceeding the amount of his monthly salary, provided the dispute is not caused by his dismissal, and when the claim is made by a worker with a view to the annulment of a reprimand pronounced against him by the management of the undertaking.

Provisional enforcement of a judgment which is subject to appeal may be granted in France, Germany and Italy. In France, provisional enforcement is allowed without security up to a certain percentage of the amount awarded in the judgment and for the remainder upon payment of security. In Germany it must be shown that no irreparable prejudice will be occasioned to the party against whom the judgment is directed. The German Act on the labour courts also contains special provisions for the enforcement of judgments relating to cases of wrongful dismissal [1]. In Italy, if the amount of the claim confirmed by the judgment exceeds 2,000 lire, the court may authorise immediate execution of the judgment for a smaller amount or else order a stay of execution.

The decisions of the labour courts are not only enforceable, in most cases, in the same manner as the decisions of the regular courts of law, but the measures taken for their enforcement are practically identical with those resorted to for the execution of ordinary judgments. In fact the law on the labour courts often repeats the provisions laid down in the ordinary rules of procedure or else merely makes a reference to them, saying that they shall apply also to the execution of the decisions of the labour tribunals.

When a party fails to comply with a labour court decision which imposes on him a definite obligation to do or refrain from doing a certain act, he may be compelled thereto by means of a writ of execution issued by the court either *ex officio* or at the request of the other party. It is worthy of note that this compulsory procedure applies even in the execution of the labour decisions rendered by the joint conciliation and arbitration boards operating in Mexico. There the writ of execution is issued at the request of one of the parties and has the same compulsory force as in the execution of an ordinary judgment. In Belgium a copy of the judgment accompanied by a writ of execution is delivered to the party who so demands for the purpose of having it served on the party against whom the sentence was pronounced, and then becomes effective 24 hours after service. Under other systems, for instance in Chile, the writ of execution may be issued either at the request of one of the parties or *ex officio* by the court.

It may be interesting to point out that even in labour matters the writ of execution may take various forms. For example,

[1] Cf. monograph on Germany, p. 107.

in Chile, the writ may authorise the issue of a distress warrant specifying the amount and nature of the property to be seized when the judgment is for the payment of a sum of money. The exact procedure to be followed according as the distress is to be levied upon money, goods or real estate, is that which is laid down in the rules which apply for the enforcement of the decisions of the ordinary courts of law.

Under the Labour Courts Act of Czechoslovakia the judgments of the labour tribunals, which include the compulsory decisions of the courts as well as the arrangements made under their auspices, may be enforced by means of a warrant for an attachment in accordance with the rules of procedure contained in the Distress Code.

The procedure is very similar also in Mexico, where the Labour Act even specifies the classes of property such as household articles, implements, tools and animals used for work, etc., which cannot be seized. The Act moreover stipulates that if the award comprises an order for specific performance and it is not carried out within the prescribed period of time, then the particular act will be performed at the expense of the party liable or else damages may be granted, at the option of the claimant. Likewise if the award contains an injunction not to do a particular act and the injunction is not obeyed, then the claimant may choose whether he will have the former state of things restored, if that is feasible, at the expense of the party liable, or else demand damages.

The foregoing illustrations are not intended as an exhaustive enumeration of the cases where the law on the labour courts lays down specific rules of procedure for the compulsory enforcement of the decisions of the judicial labour authorities. None the less they may suffice to show the obvious analogy between the methods of enforcing labour court decisions and ordinary legal decisions. It may be added that in several countries the Acts on the labour courts merely lay down that the labour decisions may be enforced compulsorily without even alluding to the procedure whereby this compulsion may be exerted. The reason is, no doubt, that in such cases it is clearly implied in the eyes of the legislator that the judgments of the labour tribunals are to be compulsorily executed by, *mutatis mutandis*, the same rules of procedure as apply to the decisions of the ordinary courts, and this is often the case even with regard to appeals.

§ 8. — Appeals

In nearly all the countries which have established a judicial labour system, provision is made allowing appeals to a higher court against the decisions of the labour courts of first instance. The only exceptions are Mexico, where the decisions of the Joint Boards for conciliation and arbitration are final, and the Scandinavian countries, where only certain rulings of the chairman of the central labour tribunal are subject to an appeal before the regular judiciary. There are only five countries where special labour courts of appeal can be found ; these are Belgium, Chile, Germany, the Canton of Geneva in Switzerland and Venezuela. In the other countries the judgments of the labour tribunal may be final, as in Sweden, or else may only be contested before the ordinary courts of law.

But the ordinary courts of appeal sometimes assume the role of special courts of appeal, although the number of professional judges usually exceeds the number of assessors who in certain cases may be allowed on the bench. In Italy, for instance, two assessors, one representing the employers and one the workers, sit at the hearings of the labour sections of the appeal courts, which already comprise three professional judges. When assessors have not been nominated two more professional judges are added to the bench.

Similarly, in Poland two assessors must sit on the bench of the ordinary regional courts of appeal if the appeal is one against the decisions of the labour courts, unless the amount involved does not exceed 300 zloty and the appeal is based on the grounds that the judgment appealed from was given under such conditions as to render it invalid or else exceeded the competence of the labour courts or violated some provision of the law. Again, in Czechoslovakia, when the amount involved in the dispute exceeds the sum of 300 crowns two assessors must be added to the three professional judges who constitute the appeal tribunal for appeals against the decisions of the labour courts [1].

The appeal procedure is usually governed in part by the rules which apply in the case of ordinary appeals and in part by special rules designed to cope with the circumstances which are peculiar to labour disputes and in particular to hasten the enforcement

[1] See below the section entitled " Appeals " in the national monograph for Czechoslovakia.

of the decisions. The law in certain cases specifies that even the proceedings in appeal may be entirely oral.

As a general rule appeals are lodged directly with the competent appeal court of first instance or of second instance as the case may be. There are, however, one or two exceptions to this rule. In Belgium the statement of appeal is always addressed to the probiviral court which rendered the decision, to be transmitted to the competent probiviral court of appeal, whereas under Rumanian law the appeal may be lodged, at the option of the party who takes action, either directly before the appeal court or indirectly through the labour court of first instance.

In a great many cases there may be more than one appeal, that is, the dispute may be taken from the labour court of first instance to the appeal court of first instance and from the latter to the appeal court of second instance or of last resort. This is bound to happen particularly in the countries where labour matters are subject to the same rules as apply to appeals in ordinary civil actions, since in most countries there generally exist regional courts of appeal and a central court of appeal. The same principle was followed in the creation of the labour courts of appeal of Germany, where the decisions of the local labour courts may be taken before the district labour courts and from them to the Federal Labour Court. On the other hand, in Belgium the law allows only one appeal before the probiviral courts of appeal, which render final decisions.

As a rule the laws on the labour courts impose definite time-limits within which appeals must be made, and often the courts are given a fixed number of days for handling a case. Thus, according to Belgian rules of procedure, an appeal against the decision of a probiviral court must not be lodged before five days from the time a copy of the judgment was served on the party concerned, if the judgment was rendered by default, and before three days in all other cases, the object being to curb any undue haste in starting appeal proceedings which may hold no chance of success. But no appeal is admissible after the expiration of a period of fifteen days. In France the appeal cannot be made before three days, unless provisional enforcement was granted, or after ten days from the time of the delivery of the judgment. The Labour Code of Chile allows only three days for submitting an appeal and gives the labour judge only five days to render a decision which must be executed within two

days after it is issued. In the greater number of countries, however, the time-limits are longer than those mentioned above. A fortnight is the more usual delay permitted for appeals. But even then it is less than is generally allowed for appeals against judgments of the ordinary courts of law.

A further measure sometimes introduced in the regulations to ensure a more prompt settlement of labour disputes consists in prohibiting appeals against the rulings of the labour courts except in conjunction with the appeal against the final decision. A provision of that nature necessarily removes the possibility of delaying the proceedings and of increasing the costs of the action by renewed appeals lodged against interlocutory decisions of the labour tribunals on questions of procedure which may not on the whole affect the final decision of the labour tribunal. The reader may here be referred to the monographs on the labour tribunals of Belgium, Germany, Italy and Rumania, for instances of that rule.

Another interesting feature of the procedure for appeals in labour disputes is that in some countries the decisions of the labour courts may be contested before a higher tribunal regardless of the amount at issue. This is necessarily the case when the law allows appeals to be lodged by a public authority on the ground that the interests of the State are being jeopardised by a decision of a labour tribunal. Obviously in such a circumstance the amount involved in the dispute may have no relation whatsoever to the question of principle. In Italy the Attorney-General may appeal *ex officio* to the Supreme Court against the decisions of the labour judiciary on the grounds specified in the Code of Civil Procedure. The interests of the State also serve as a ground for an appeal by the public authorities to a higher tribunal against the decisions of the labour courts in Portugal and the U.S.S.R. In the latter country even the regional labour prosecutors may *ex officio* lodge an appeal before the regional courts against the decisions of the labour tribunals. Ultimately the public judicial authority may bring the matter up before the Supreme Court for the revision of the judgment on the ground that it infringes the law, threatens the security of the State or causes some grave prejudice to the working class.

As regards appeals by the parties to the dispute, the law often stipulates that no appeal will be allowed unless the sum involved in the judgment exceeds a certain amount. The object obviously is to restrict litigation in matters of trifling importance.

To give only a few examples, appeals are not allowed in Belgium unless the original claim exceeded the sum of 500 francs, or in France if it does not exceed 1,000 francs. But in France the amount at issue is irrelevant when the competence of the probiviral courts is the subject of the appeal. In Italy the limit is fixed at 2,000 lire, and in Rumania at 50,000 lei.

In other countries a further element is taken into consideration. For instance, in Czechoslovakia no appeal is allowed when the amount involved does not exceed 300 crowns, but the lower court may nevertheless grant leave to appeal when the rule of law to be applied is of considerable importance. Again, in Germany, although there can be no appeal when the sum at issue is not more than 300 RM., leave to appeal may nevertheless be granted by the lower court on the ground of the fundamental importance of the action. On the other hand, when the amount of the claim is more than 6,000 RM., an appeal against a decision of the local labour court may be lodged directly before the appeal court of second instance, that is, the Federal Labour Court.

In labour matters, as in ordinary civil actions, the task of the appeal court may be to affirm, revise or annul the decision of the lower court. In the latter case the court will either judge the dispute on its merits or refer the matter back to the lower court for a new trial, according to the rules of procedure in force. Where there exist special labour courts of appeal, either system may prevail. In Belgium and Chile, for instance, the labour appeal tribunals discharge the functions of courts of review and examine the case anew whenever they do not uphold the decisions of the inferior courts.

Under the German system the district labour courts refer back to the local labour courts the decisions which are not affirmed, whereas the Federal Labour Court serves as a court of review for the decisions of either the local or the district labour courts. The position is reversed in Italy and Spain, where the appeal courts of first instance serve as courts of review, and the Supreme Court of Appeal as a tribunal of last resort which can only confirm or quash the decisions of the lower courts. In the latter event it must refer the case back with special instructions for a new trial by the court which rendered the judgment, or, as Italian law permits, by another inferior court. When the decisions of the labour courts are contested before the regular appeal courts, the procedure is generally the same as in the case of appeals against the decisions of the ordinary courts of law.

Apart from appeals against the decisions of the labour courts of first instance, there are cases where the labour courts or the appeal courts which hear appeals from the labour courts may be called upon to review the conciliation or arbitration agreements concluded out of court. This may be exemplified by a reference to the recent Portuguese law on the labour courts, which lays down that in the case of industrial accidents where the amount to be paid in compensation for the injury sustained was fixed in the course of the preliminary conciliation proceedings conducted by the officials of a labour court, the person concerned has the right to apply to the same labour court for a revision of the pension or compensation whenever there is an aggravation of the capacity for work of the injured. To that extent the labour court of first instance can serve as a court of appeal. The labour court in Denmark may likewise be empowered by the terms of a collective agreement to serve as a court of appeal in arbitration cases which do not normally fall within its compulsory jurisdiction. Again, in Italy, the labour sections of the appeal courts may be called upon to hear appeals against private arbitration awards issued in individual labour disputes, provided the sum involved exceeds 2,000 lire.

Although the foregoing constitute the only instances where the law relating to the labour judiciary contains specific provisions on this point, it may safely be assumed that, in the countries where the agreement of the parties suffices to give the labour tribunals jurisdiction over matters which do not ordinarily come within their competence, there may arise circumstances when the consent of the parties would operate to entrust the labour tribunals with revision powers not specifically conferred by law.

CHAPTER VI

CONCLUSIONS

In pointing out the similarities and differences between the various judicial labour systems, no attempt was made to compare their relative merits, for such a comparison would imply an appreciation of the manner in which a particular judicial institution in use in one country would function if transplanted into another country where social conditions are different and where the judicial concepts at the basis of the administration of justice may have originated from a different source. In fact to the question : which is the best system of labour courts ? the answer must be given that the best system is undoubtedly that which corresponds the most adequately to the political, administrative and judicial institutions of the country concerned.

The purpose of this study will have been achieved if it has sufficed to impress on the reader the importance of the part played by the labour courts in the judicial settlement of labour disputes in a great many countries, and to outline the essential features which are common to practically all systems.

It is scarcely necessary to recall that the different systems of labour courts all aim at remedying certain inconveniences of the administration of justice by the ordinary courts of law. Their object is to make possible a less expensive and more speedy settlement of labour disputes while offering no lesser guarantees that justice will be done.

For these reasons the expenses involved by the functioning of the labour courts are generally met by the public authorities, which do not attempt to retrieve their costs by imposing the same fees and stamp duties as are collected from the litigants who come before the ordinary courts of law. And what is more, the procedure is simplified. In practically all countries where there is a labour judiciary, the parties to a labour dispute may go directly before the labour judge or the clerk of the labour court to lay their complaint orally. They are not only allowed to appear in person at the hearing, where the whole procedure is also oral, and present the arguments in support of their claim,

but in most cases it is their duty to appear in person before the chairman of the court who will endeavour to settle the matter by amicable arrangement.

One of the distinguishing features of the labour judiciary is the importance it attaches to the conciliation efforts which must be made as a preliminary to the trial of a dispute by judicial process. This may be considered one of the commonest and greatest assets of the special labour tribunals. In fact conciliation procedure often gives the litigants an occasion to frame their claim in more modest terms, it facilitates the conclusion of agreement between the parties and thereby avoids the expenses which would otherwise be occasioned by the trial of the case, and assures an equitable adjustment based on the willingness of each party to understand the point of view of the other. Statistics show that in practice a very large percentage of individual labour disputes are adjusted by this means.

What in the end gives greater value to the special tribunals for the settlement of labour disputes is the fact that in all countries and under all systems the litigants are judged by their peers. Thus in nearly all cases the labour courts are composed of an equal number of representatives of employers and workers, appointed on the recommendation of their respective trade associations, and of a chairman chosen from among these representatives or named directly by the administrative authorities. This is tantamount to saying that the labour courts nearly always comprise a bench which should possess all the technical and practical knowledge that is required for the adjustment of labour disputes.

Exceptionally the labour courts are entrusted with adjustment of collective disputes about interests. More often than not, however, they are concerned only with disputes about rights.

Otherwise labour courts bear a close resemblance to the ordinary courts of law inasmuch as they are usually entrusted with compulsory judicial functions, which means that a party to a dispute may be compelled to answer a charge laid against him before the labour courts which render decisions independently of the consent of the litigants, and enforce them by such compulsory measures as are applicable to the enforcement of judgments issued by the ordinary courts of law.

An advantage of the labour judiciary is that it tends to the creation of professional labour judges who necessarily contribute to the development of uniform precedents in labour decisions.

Such precedents are bound to serve as guiding rules not only for the different labour courts within a country, but in the course of time the reasoning on which they are based and the principles which they enunciate may be accepted in other countries having similar legislation. Legal precedents of that nature are of special value in the application of international labour conventions which, when generally ratified, imply that equivalent labour laws are in force in a large number of countries. But analogy in labour legislation is not of itself sufficient unless the legal interpretation placed upon it is inspired by the same juridical concepts.

The experiment of a permanent labour judiciary existing side by side with the regular judiciary has been going on for many decades. There is evidence to show that the idea has gained ground continually. At the present time twenty-three countries possess such judicial bodies. History shows that no country which tried the experiment ever abandoned it altogether. On the contrary, the changes made were nearly always designed to extend the jurisdiction of the special labour tribunals, and in certain countries they handle practically all cases of friction affecting employment relationships.

NATIONAL MONOGRAPHS

BELGIUM

1. Introduction

Belgium was one of the first countries to have special tribunals for the judicial settlement of individual labour disputes. Probiviral courts were established at Bruges as early as 1810 and at Ghent in 1813. The results obtained proved very satisfactory and in the course of time further legislation was enacted with a view to the establishment of probiviral courts in other parts of the country. In fact it was found after some years that the labour tribunals in existence in certain sections of the country were too numerous for the number of disputes dealt with and that consequently unnecessary expenditure was being incurred. To remedy this situation a law passed on 25 June 1927 provided for a new division of the areas coming within the territorial jurisdiction of certain labour tribunals. It also united into one the numerous probiviral courts of the City of Brussels.

The jurisdictional area of each probiviral court has always been distinct from that of the ordinary court of law, although in certain cases the territorial jurisdiction of the two may coincide. It was obvious from the beginning that considerable advantage would in practice be derived from this system, since industrial centres where labour tribunals are most needed would not necessarily be the most appropriate seats for ordinary courts of law, and the regional requirements in the case of labour courts could differ substantially from those affecting the ordinary administration of justice.

The special laws and regulations governing the constitution and working of the probiviral courts are based on various legislative enactments which have been passed from time to time. On each occasion the requirements for election to membership of the probiviral courts were changed, their powers were increased and their jurisdiction was extended in order to cope with the new developments in industry. Such was the purpose of the Acts of 7 February 1859, of 31 July 1889, and particularly of the Act of 10 May 1910.

With the passage of the 1910 Act, Belgium could be said to possess a complete system of labour courts for the settlement of individual labour disputes arising in almost any part of the country. Henceforth the labour judiciary was competent to handle disputes affecting not only the heads of industrial undertakings as under the 1889 Act, but also the heads of commercial undertakings. This was a far-reaching extension of the jurisdiction of the probiviral courts, but experience showed that further amendments would be necessary. There were a number of cases where the employee could not seek redress before the labour tribunals owing to the fact that the person by whom he was employed could not strictly be considered as the head of an undertaking. That is why in the later Probiviral Courts Act of 9 July 1926 [1]

[1] International Labour Office: *Legislative Series*, 1926, Bel. 10.

the expression "head of undertaking" was replaced by the word "employer".

Another modification which was effected as a result of the experience acquired in the course of years did away with the different categories of trades and industries. Under the Law of 1910 there was to be a classification by Royal Decree of the various industries and trades which would be entitled to elect representatives to the respective chambers competent to deal with disputes connected with the particular industries or trades. This necessitated the appointment of an unreasonably large number of assessors. There was no justification for the existence of so many different chambers since so few disputes were of a purely technical character. In practice most labour disputes related to the application of the Law of 10 March 1900 on contracts of employment and of the general principles of law governing employment relationships.

In abolishing the different classes of trades and industries, it was nevertheless imperative to make some reservations with regard to very special cases which might arise. To this end the Act provided that when a dispute involved questions of a particularly technical character, a special assessor could be appointed to the chamber, or, again, special chambers could be formed to deal with such questions.

2. The System in Force

Apart from correcting certain deficiencies in the previous legislation, the Probiviral Courts Act of 9 July 1926, which governs the present judicial labour system of Belgium, introduced several innovations. For instance, it made it possible for the parties to a dispute which could not be settled by conciliation during the preliminary proceedings to accept the arbitration of the members of one of the chambers. Other modifications affecting the procedure are given below along with the general description of the working of the probiviral courts of first instance as well as of the probiviral courts of appeal.

Certain changes were also made in the application of the general rules to the probiviral courts of Greater Brussels, but as these exceptions are of local interest only, they are not taken into account in the present study.

A special probiviral court for seamen was set up in Antwerp in accordance with the provisions of a later Act dated 5 June 1928 [1] for the regulation of seamen's articles of agreement. Its jurisdiction extends to all ports in the country and covers all disputes between members of the crew and the owners or masters of Belgian merchant vessels, arising out of the application of the Act.

Constitution and Composition of the Courts. — Under the Belgian Constitution, labour courts, like other judicial tribunals, may only be established by legislative Acts, which must specify the area of their jurisdiction and, if necessary, the trades and industries which come within their competence. Administrative regulations, however, may be laid down by Royal Decree.

The municipal authorities within the area of the proposed court and the standing committee of the provincial council must be consulted before the establishment of probiviral courts of first instance. One of the reasons for this provision is the share assumed by them in defraying the expenses of the labour tribunals. Since 1926 the trade

[1] *L.S.*, 1928, Bel. 5-A. (Secs. 116 *et seq.*)

organisations of employers and of employees are also asked through the press or by some more direct means to express their views on the matter.

Every probiviral court is now divided into two chambers, one for wage-earning employees and one for salaried employees. As already pointed out, special chambers may also be established within a probiviral court to deal with disputes of a technical character which the ordinary chambers would not be particularly qualified to handle. Likewise, in the case of disputes between wage-earning and salaried employees, a special chamber must be constituted in such a manner that each of the groups of the two competent chambers will be represented by one of its members.

Each chamber is composed of an equal number of employers and of employees. The chamber for wage-earning employees may comprise from six to twelve members, and the chamber for salaried employees from four to eight members. In addition as many substitutes are appointed to each chamber as there are members, to replace the members in case of death or of temporary incapacity to act.

The members of the probiviral courts are appointed as a result of elections held every six years [1]. The electors, who may be of either sex, must satisfy certain requirements. They must be Belgian citizens having reached the age of twenty-one years. They must belong to the category of salaried or wage-earning employees, including seamen, or be employers of such persons. In the case of undertakings carried on by companies, the representative of the company is considered as the employer. Likewise, for railway undertakings, the official responsible for the daily management of the undertaking is considered to be the employer.

These electors are themselves eligible for membership of the courts provided they have reached the age of twenty-five years. Any member of a probiviral court is disqualified for re-election if, at the request of the court, he has been declared by the Appeal Court to have vacated his office on the ground that he has lost his qualifications, has been sentenced to a period of imprisonment exceeding one month, or has lost his electoral rights in connection with Parliamentary elections or again because he has failed for two consecutive months to attend sittings of the probiviral court unless in the latter case his absence could be justified.

In order to avoid unnecessary expenses and to facilitate the task of the various administrative bodies concerned the lists of electors for the labour courts are drawn up and revised at the same time as the electoral lists for the legislative Chambers.

Before discharging the duties of their office the members, as well as their substitutes, must take the oath to judge impartially and keep secret the deliberations of the court. The first duty of the members consists in drawing up two lists of candidates, one of employers and one of salaried and wage-earning employees, from each of which the Crown selects a president. It is decided by lot which of the two presidents will first take up office. The presidents, who preside alternately over the court for a term of one year, act as substitute for each other when

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[1] A law passed on 14 August 1933 extended the term of office of the present members and proscribed that a Royal Decree should fix the date of the next elections, which had to be held in 1937 at the latest. But a Legislative Decree of 15 January 1936 postponed the elections which were to take place in 1937 and prescribed that they shall be held in 1940 at the latest.

necessary. During the year for which they discharge their duties as president they also direct the proceedings in the various chambers. But they can only exercise the right to vote in the chamber of which they are a member.

The Crown also appoints to each chamber a legal assessor, who must be a doctor of law of Belgian nationality and of not less than twenty-five years of age. The legal assessors are equally under oath, and the senior or, in case of equality in length of service, the older one, attends the plenary sessions of the court. They take part in the discussions in an advisory capacity and when necessary give a casting vote. They are responsible for drawing up the decision of the court. One legal assessor may act as substitute for the other.

Each chamber establishes a conciliation committee composed of an employers' representative and a wage-earners' or salaried employees' representative, as the case may be. A substitute is also appointed to each of them. The conciliation committees are renewable every three months. When the dispute is one between a wage-earning and a salaried employee, the committee must be constituted by a representative from their respective groups in the existing conciliation committees of the competent chambers.

The appointment of the clerk and deputy clerks of the court by Royal Decree and of the subordinate officials in the clerk's office by the competent Minister completes the framework of the probiviral courts. All these officials must take an oath.

The remuneration of the clerk of the court and of the subordinate officials, as well as the attendance allowance and, where it is justified, the travelling allowance of the members, are borne by the State. Other expenses of the courts are shared by the various municipalities and provinces in the proportions laid down in the Act.

What has been said above with regard to the constitution and composition of the probiviral courts applies to the probiviral courts of first instance as well as to the probiviral courts of appeal. There are, however, certain minor differences. For instance, the chambers for the salaried employees and for the wage-earning employees comprise only from four to six members, and the employers' and workers' organisations are not consulted for the establishment of probiviral courts of appeal. The two presidents of these courts of appeal, who must have the degree of doctor of law and have attained thirty years of age, are appointed independently by the Crown. Moreover, no conciliation committees are formed within the respective chambers of the appeal courts. Unless there is no business on the agenda, they hold one session a month.

Competence of the Courts. — The probiviral courts are competent to settle by conciliation or by judicial procedure disputes relating to employment which may arise between employers and wage-earning or salaried employees, between wage-earning employees, between salaried employees, or between wage-earning employees and salaried employees. It should be noted that the courts have no compulsory jurisdiction in regard to disputes arising between employers among themselves.

The various matters which may come before the courts are set out in section 43 of the 1926 Act as follows :

(1) disputes respecting apprenticeship, contracts of employment and any other contracts for the hiring of services, exclusive of actions for damages arising from industrial accidents ;

(2) applications for the restitution of deposits, certificates, documents, tools, clothes or other objects handed over in pursuance of the above-mentioned contracts ;

(3) disputes respecting work-books ;

(4) actions brought on the ground of clauses in a contract for the hiring of services prohibiting the setting up of a competitive business ;

(5) disputes between wage-earning employees and persons who by way of trade let to them premises, tools or power ;

(6) disputes between wage-earning employees, between salaried employees or between wage-earning and salaried employees arising in connection with the carrying on of a trade or occupation ;

(7) disputes between artisans, and in general between persons who carry on an industrial occupation or art on their own account, either alone or with no other assistance than that of members of their family living in the same household ;

(8) disputes between owners or charterers of merchant vessels and seamen, or between owners or charterers of fishing boats and masters of vessels or fishermen ;

(9) disputes between persons who perform manual labour on their joint account in the carrying on of an occupation.

The probiviral courts are also entrusted with the responsibility of maintaining property rights in industrial designs and models. They may also be asked by the Government " to give their opinion on questions or schemes relating to employment ". Subject to the jurisdiction of the ordinary courts of law they are competent to impose a fine not exceeding 25 francs as a disciplinary measure against acts of disloyalty, serious breaches of professional duty or against " any act likely to disturb the order and discipline of the workshop, office or other place where work is carried on ".

Finally, as a result of an agreement between the parties the probiviral courts may settle by conciliation or arbitration disputes which otherwise do not fall within their competence. This is so even in the case of differences arising between employers alone.

On the other hand, according to legal precedents, the competence of the probiviral courts may be excluded by an agreement between the parties to submit a dispute based on a contract of employment to arbitration in accordance with the relevant provisions of the Code of Civil Procedure [1].

While at common law the territorial jurisdiction of the courts is usually governed by the domicile of the defendant or the place where the contract was made or where it was to be executed, under the Probiviral Courts Act the jurisdiction of the labour tribunals depends upon " the place where the undertaking or occupation is carried on or where the company, association, organisation or institution not carried on for profit exercises its functions ". This rule applies also to employees who, though not working in the establishment itself, are usually occupied within the area of the labour tribunal which exercises jurisdiction over the establishment.

The Parties and their Representatives. — In defining the competence of the probiviral courts the terms " employers " and " wage-earning " and " salaried employees " have been used. It is important to observe that the Probiviral Courts Act gives definitions of these terms. The word " employer " is used to signify a person who usually

[1] On this point see SNEYERS : " De la clause arbitrale devant les Conseils de Prud'hommes ", in *Jurisprudence du louage d'ouvrage*, Brussels, Year VIII, No. VII, 1936, pp. 193 *et seq.*

employs one or more wage-earning or salaried employees either throughout the year or at certain seasons of the year in the exercise of a trade or in the exploitation of an undertaking other than an undertaking in agriculture or forestry. Other persons deemed to be employers under the Act are : owners and charterers of ships or boats engaged in commerce or in sea fishing ; persons who by way of trade grant the use of working premises, tools or power to wage-earning employees at a fixed price in money or in kind ; persons who employ one or more gardeners ; and also companies, associations, organisations or institutions not carried on with a view to profit ; notaries and judicial officers ; the General Savings and Pension Fund ; private companies or associations which manage public utilities and certain municipal undertakings ; but not State institutions or public administrative departments.

The expression " wage-earning employee " means any person who usually performs manual work on account of an employer. The Act gives an extensive list of persons who are placed on the same footing as wage-earning employees. The list mentions caretakers, messengers, waiters employed in restaurants and public houses, apprentices and other categories.

The term " salaried employee " includes any person who usually performs intellectual work on account of an employer, such as clerks, typists, book-keepers, salesmen, actors, singers, musicians and others, but excludes persons in charge of the daily management of an undertaking, technical and commercial managers, engineers, chemists, actuaries or any one whose annual remuneration exceeds 24,000 francs. It is also provided that the Act does not apply to persons employed on account of a member of their family and living in the same household, or to domestic and other house servants employed in the personal service of the employer or his household.

The parties to a dispute must attend in person for the conciliation proceedings. But if lawful justification for their absence can be shown, they may be represented by members of their respective groups. At the trial they may be represented by either an advocate, a solicitor or any person approved of by the competent chamber, but they are compellable to appear in person at any time. The competent chamber may even authorise a married woman to sue or be sued. It may also appoint a guardian or trustee for a minor, to replace the father or guardian who is absent or unable to act. An action may be brought *in forma pauperis* if the party concerned can produce a certificate in due form showing that he is in a state of need.

Procedure

All stages of the proceedings before the labour tribunals are governed by special rules laid down in the Probiviral Courts Act. Their purpose is always to attain a just and expeditious settlement of the dispute at relatively no expense to the litigants. All documents connected with suits before the labour courts are exempt from stamp duty and registration fees.

When a divergence of opinion exists as to whether a particular case should come before the salaried employees' chamber or before the wage-earners' chamber a special chamber is set up to decide the matter. This special chamber must be composed of the president, the senior, or, in case of equality in length of service, the older, legal

assessor and four members chosen respectively from each of the employers' and wage-earners' groups in the wage-earners' chamber, and the employers' and salaried employees' groups in the salaried employees' chamber.

Preliminary Proceedings. — The parties are summoned before the conciliation committee of the competent chamber by an ordinary letter from the clerk of the court. If an agreement is reached, a record of the proceedings signed by the parties will have the force of a private agreement. When conciliation proves unsuccessful the committee, to which is added the legal assessor, may assume judicial functions and render judgment if the amount at issue does not exceed 200 francs. In such a case the decision of the conciliation committee sitting as a judicial committee is without appeal. Or, again, when conciliation fails in the case of disputes submitted to one of the chambers by agreement between the parties, the latter may accept an arbitral settlement by the same chamber. The matter is then settled by arbitration in accordance with the provisions of the Code of Civil Procedure.

The Trial. — When a dispute between parties coming within the jurisdiction of the probiviral courts is not settled in the course of the preliminary proceedings, it is brought up for trial before the competent chamber, to which not more than four members, selected in equal numbers from among the employers and wage-earning or salaried employees, are convened. One representative of the employers and one representative of the wage-earning or salaried employees constitute a quorum. For this purpose no account is taken of the legal assessor and the president of the court, unless the latter is a member of the competent chamber. But these two officers must be present at the session.

When the dispute involves a question of a technical character and the members present do not possess the qualifications necessary to deal with it, the chamber must co-opt a technical assessor from each group concerned, making the selection from among the eligible persons engaged in the same trade as the parties.

The legal and technical assessors as well as the members of the chamber may be challenged on various grounds, including among others relationship by blood or marriage to one of the parties, a personal interest in the dispute or the fact that the person challenged is an employer or employee of one of the parties. If the challenge is not acquiesced in by the person immediately concerned it is adjudicated upon by the ordinary court of first instance in the district.

Members who fail to attend a session of the probiviral court may be sentenced by the court of appeal to a fine of not less than 26 nor more than 200 francs, unless they can show good reason for their absence. When the substitutes are also unable to discharge their functions, the technical assessors may be convened instead of them. In any event, the trade of the substitutes or technical assessors is taken into consideration and when there are more than one of the same trade, the order in which they are convened depends upon their respective length of service and ultimately, when there is equality in that respect, the oldest is called upon.

The sessions of the chambers are public unless the nature of the dispute is such that the hearing can be more properly conducted in private. To facilitate the task of the court the production of evidence and the necessary investigations may be ordered. Witnesses and experts may also be summoned. A most noteworthy rule of procedure is that which stipulates that a chamber must not give judgment until it has in

its turn endeavoured to settle the dispute by conciliation. This confirms the purpose of the law which, in setting up special labour tribunals, aims at the settlement of disputes with the least possible litigation.

Judgment and Execution. — The decision of the probiviral court must be pronounced as soon as possible, in any case not later than at the next ordinary session. Ordinary sessions are usually held twice a month. A minute of the judgment of the court is signed by the president, the legal assessor and the clerk of the court and kept in the court records. A copy thereof, accompanied by a writ of execution, is delivered to the party who makes a request to that effect and has an interest in causing it to be served on the party against whom the decision was given, with a view to the execution of the judgment on the expiration of the time-limits. The writ of execution becomes effective within 24 hours. A judgment which is subject to an objection or to an ordinary appeal may be enforced provisionally up to the amount of 800 francs without deposit of a security, but if the sum involved exceeds that amount then a security is required.

Appeals. — The decisions of the probiviral courts of first instance may be contested before the probiviral courts of appeal for the districts in which the courts of first instance are situated when the amount of the claim exceeds 500 francs. The appeal is begun by means of a declaration deposited with the clerk of the court of first instance which rendered the original decision. An appeal against an interlocutory judgment or ruling of the court may only be made after the final judgment and in conjunction with the appeal against the latter.

Appeals against rulings of the court or the final judgment must not be lodged before five days in the case of judgments rendered by default and three days in all other cases. But no appeal is allowed after the expiration of a period of fifteen days from the time when a copy of the judgment was served on the parties.

3. Results

Since Belgium is one of the few countries where special labour tribunals have been in operation for more than a century, it might be appropriate to include in this monograph such statistics as would show the gradual development of the work of these tribunals in the course of so long a span of years. The earliest statistics available begin with the year 1862 and are to be found in the *Annuaire Statistique de la Belgique et du Congo Belge* [1] for the different years. Table I below gives the figures for every fifth year up to 1920, except for 1915, for which no statistics are available, and for each successive year up to 1926.

No statistics are available for the years 1927 to 1931. This corresponds to the period of reorganisation which followed the passage of the Law of 25 June 1927 respecting the new division of the areas within the jurisdiction of the probiviral courts. The *Annuaire Statistique* for 1937 contains the statistics for the years 1932, 1933, 1934 and 1935 which are reproduced under a slightly different form in table II below.

It will be noticed that since the time statistics have been available, the industrial development of the country has been such that the number of disputes coming before the probiviral courts has increased about

[1] Ministère de l'Intérieur et de l'Hygiène.

eight times, whereas the activity of the courts has so improved that it was only necessary approximately to double their number. A mere glance at either of the two tables given below will convince the reader of the importance of conciliation procedure in the judicial labour system ; indeed, in Belgium more individual labour disputes are settled by conciliation than by any other means.

TABLE I

Year	Number of courts	Actions lodged	Cases settled by conciliation	Cases not settled by conciliation	Cases settled by judicial decision	Abandoned cases	Pending actions
1862	22	2,761	2,345	—	179	201	36
1865	23	3,382	2,712	—	419	326	21
1870	23	3,536	2,687	—	579	242	28
1875	23	4,158	2,750	—	578	494	17
1880	23	3,591	2,371	564	264	443	3
1885	23	3,336	2,365	503	322	458	14
1890	25	4,531	3,399	1,132	457	667	8
1895	27	7,153	5,365	1,788	632	1,134	22
1900	33	8,228	5,493	1,988	761	1,988	47
1905	33	9,046	5,536	3,504	737	2,277	17
1910	33	9,229	5,754	3,465	866	2,190	81
1920	48	11,559	6,622	3,424	1,871	2,002	486
1921	48	10,477	6,138	4,635	2,404	1,554	517
1922	48	12,207	6,453	4,037	2,542	2,152	612
1923	48	12,647	6,692	4,403	2,849	2,784	394
1924	48	13,593	6,937	5,155	2,975	2,310	379
1925	48	13,859	6,902	5,253	2,728	2,326	292
1926	48	14,031	6,633	5,638	2,950	2,698	503

TABLE II

Year	Number of courts	Conciliation Committee				Judicial Committee		Council		Other measures
		Actions				Cases		Cases		
		Pending and lodged during the year	Settled by conciliation	Referred		Settled amicably	Settled by judicial decision	Settled amicably	Settled by judicial decision	
				to the Judicial Committee	to the Council					
1932	47	17,293	6,695	985	7,019	124	405	568	4,588	2,680
1933	47	17,382	6,904	839	7,496	110	332	527	5,006	2,050
1934	47	16,087	5,973	1,009	6,925	89	725	512	4,724	1,898
1935	47	15,924	6,728	858	6,636	109	495	411	4,271	2,564

4. Summary

In Belgium the judicial machinery for the settlement of individual labour disputes consists of a network of probiviral courts of first instance and of probiviral courts of appeal composed of an equal number of representatives of employers and of employees. Each court is divided into two chambers, one for the employers and wage-earning employees, and one for the employers and salaried employees, to each of which are added a legal assessor and, when the nature of the case requires it, a technical assessor. A conciliation committee is set up within each chamber.

The probiviral courts are competent to settle by conciliation, arbitration or by judicial procedure all individual labour disputes arising between employers and their wage-earning or salaried employees, between wage-earning and salaried employees, or between salaried employees among themselves or wage-earners among themselves. The consent of the litigants is required in the case of disputes between employers among themselves. In principle the parties must attend in person for the conciliation and arbitration proceedings. But when for a lawful cause they are unable to attend personally, they may be represented by a member of the group to which they belong. Representation by a solicitor or an advocate is permitted when a case reaches trial.

At the preliminary hearing before the conciliation committee an attempt is made to adjust the dispute by agreement between the parties. Failing conciliation the committee may exercise judicial functions and give a binding decision provided that the sum at issue does not exceed 200 francs. If the sum involved exceeds that amount then the matter is referred for trial to the competent chamber which must again attempt to effect a settlement by conciliation before delivering its judgment. But the parties are always at liberty to appear before one of the chambers of the probiviral court declaring that they accept its good offices for settlement by arbitration. If the amount of the claim exceeds the sum of 500 francs an appeal against the judgment may be lodged before the probiviral court of appeal for the district in which the labour tribunal of first instance is situated.

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BOLIVIA

1. Introduction

In Bolivia the special machinery for the settlement of labour conflicts is of quite recent date. The first legislative action taken on the subject appears to be an Order of 29 September 1920 providing for the setting up of conciliation boards to deal with strikes and lock-outs. These boards have already been described in a previous publication of the International Labour Office [1]. Although no separate labour courts exist at the present time for the settlement of other classes of labour disputes, it is interesting to recall that the Salaried Employees' Act of 21 November 1924 contained a provision to the effect that disputes between salaried employees and heads or owners of commercial and industrial establishments, respecting the service or salary of the employees, were to be settled by a special court composed of a judge and a representative of each of the parties. The decisions of this special tribunal were final whatever be the amount involved in the dispute.

Later an Act of 18 March 1926 [2] entrusted the National Labour Department with specific functions comprising among others: *(a)* adjudication upon all matters connected with industrial accidents, including those occurring in mines; and *(b)* intervention in disputes between employers and employees respecting the contract of employment and wages claim, excepting the disputes affecting commercial employees referred to above.

The following year an Act [3] dated 12 February converted the National Labour Department into the General Labour Directorate with all the powers of the former Labour Department, and repealed the provisions of the 1924 Act in so far as the special labour courts were concerned.

2. The System in Force

Under the 1927 Act the settlement of labour disputes other than strikes and lock-outs devolves upon the heads of the district offices representing the General Labour Directorate. They are competent to handle disputes arising between salaried employees in commerce and industry and the heads, managers or directors of commercial or industrial establishments. The Order of 29 September 1920 relating to the conciliation boards for strikes and lock-outs remains in force. The expression " salaried employee " is defined to include " any person who performs work in an office, whether for a salary or on a profit-sharing basis, clerks, shop assistants, commercial travellers, and tramway employees paid by the month " [4].

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[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, p. 557.

[2] *Legislación minera, petrolera y social*, 1928, p. 383.

[3] *L.S.*, 1927, Bol. 1.

[4] Earlier laws dated 8 January, 16 March and 18 November 1925 defined the expression "salaried employees" to mean "persons employed in the offices of any branch of commerce or industry, in mines, and those employed at a monthly wage in either State or private undertakings, or on tramways and those conducting the tramways". Cf. *L.S.*, 1925, Bol. 1.

3. PROCEDURE

It is important to note that labour disputes are not withdrawn altogether from the competence of the police authorities, which were for some years the sole judges in differences between capital and labour. The initial claim must still be lodged with them. The 1927 Act is not very clear as to what their rights are, nor does it contain any detailed rules of procedure, but it lays down that, when a reply has been made by the party against whom the action is taken, " the police authority may examine the case within a time-limit of eight days and *shall* prepare the case for decision, after which the document *shall* be transmitted to the district office concerned ". This would appear to relegate the police authority to the position of an administrative clerk in so far as labour disputes are concerned.

The Act further provides that, in dealing with a case, the head of the district office may examine the books of the establishment and take such other expert advice as he may deem necessary. Against his decision an appeal may be taken, within three days, to the General Labour Directorate, which in fact is empowered to review *ex officio* the decision of its representative. A final appeal against the decision of the General Labour Directorate may be made within eight days to the district courts of law when the amount at issue does not exceed 1,000 bolivianos or to the Supreme Court when it exceeds that amount. In either case no deposit of security is required, and the parties cannot be compelled to appear in person.

Unfortunately no statistics are available to show how the system has worked out in practice. Possibly it has not fulfilled expectations, since a more recent Law of 19 May 1936 provides for the settlement of labour disputes by means of joint boards under the supervision of the labour authorities [1]. But this new provision has not yet been put into operation.

CHILE

1. INTRODUCTION

In Chile labour legislation and particularly legislation concerning the settlement of labour disputes is of quite recent date. The first Government Order on the subject of labour disputes was issued on 14 December 1907. At that time only collective disputes affecting labour were considered sufficiently important to deserve special attention. Conciliation and arbitration in collective labour disputes were also the main object of the Order of 24 October 1921 and of the Act of 8 September 1924 [2] concerning disputes between capital and labour.

But the permanent conciliation boards set up under the above-mentioned Act were also competent to deal with individual disputes arising out of the administration of the Act itself and of previous Acts

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[1] *Bolctin del Trabajo de la Dirección general del Trabajo de Bolivia*, Year IV, No. 31, 1936.

[2] *L. S.*, 1924, Chile 5.

relating to contracts of employment [1] and trade unions [2]. Moreover many Acts prescribed that disputes, individual or collective, connected with their application were to be settled by special arbitration boards. For instance, the Welfare Board set up under the Salaried Employees Act [3] was competent as a conciliation and arbitration board for the settlement of differences based on the provisions relating to the Superannuation and Insurance Fund created under that Act.

This complex system of arbitration boards was abolished by a Government Order dated 31 December 1927 which replaced these various boards by a network of labour courts composed of single judges. This was the first attempt to set up special judicial authorities for the settlement of individual as well as collective labour disputes. Various objections, however, were raised against the Order of 1927, and on 13 May 1931 it was repealed by a Legislative Decree [4] which constitutes the Labour Code of Chile.

2. The System in Force

The part of the Labour Code which deals with conciliation and arbitration in collective disputes restores with certain modifications the conciliation and arbitration system which had been introduced by the Act of 8 September 1924. It has already been described in the International Labour Office's study of conciliation and arbitration in Chile [5].

Below is given a brief description of the judicial system for the settlement of individual labour disputes established in virtue of the provisions contained in Part I of Book IV of the Labour Code, which reproduces with certain improvements the system of labour courts contemplated in the Order of 31 December 1927. It comprises local labour courts and labour courts of appeal under the supervision of the Supreme Court [6].

Constitution and Composition of the Courts. — The local labour courts and the appeal labour courts are set up in the towns and localities designated by the President of the Republic. Their jurisdiction extends to the territory specified in the presidential decree in virtue of which they are established.

The local labour courts are composed of a single judge having special qualifications in regard to labour matters. In the departments where there is no special labour judge the functions of the labour judge are discharged by a judge of the ordinary courts of law. In that case the clerk of the ordinary court of law acts as clerk of the labour court. When there is more than one labour court in a town, the General Labour Inspectorate determines how the cases are to be allocated.

[1] *L.S.*, 1924, Chile 2.

[2] *L.S.*, 1924, Chile 3.

[3] *L.S.*, 1925, Chile 1.

[4] *L.S.*, 1931, Chile 1.

[5] *Conciliation and Arbitration in Industrial Disputes*, pp. 567 *et seq.*

[6] Act No. 5158 of 12 April 1933 (*Diario Oficial* No. 16551 of 13 April 1933) and Legislative Decree of 14 July 1932 (*Diario Oficial*, No. 16357 of 28 August 1932).

The labour courts of appeal are composed of the president of the ordinary appeal courts, assisted by an employer and a salaried or wage-earning employee. When the Court has to judge cases connected with articles of agreement of officers or members of the crew of the national mercantile marine, the chairman is assisted by a shipowner and an officer or member of the crew instead of an employer and a wage-earning or salaried employee. In any event the members of the court are appointed directly by the President of the Republic, but he may not appoint persons who hold managerial positions or representative offices in industrial associations or trade unions, or persons who have been fined during the preceding year for contravening the provisions of the Labour Code or the laws respecting provident institutions.

Competence of the Courts. — Under Article 418 of the Labour Code the competence of the labour courts extends to the following matters:

"(1) All disputes which may arise concerning the administration of the provisions of this Code or of the terms of contracts of employment;

"(2) Cases arising out of the administration of Act No. 4054 respecting compulsory insurance against sickness, invalidity and old age[1];

"(3) Cases arising out of the administration of Parts V and VI of the Salaried Employees Act."

Since the Labour Code comprises the whole body of legislation affecting labour matters, not excluding the provisions relating to industrial accidents, it may be said that practically all individual labour disputes come within the jurisdiction of the labour courts. Although Article 418 speaks of *all* disputes connected with the application of the provisions of the Code, it should not be taken to include differences which are liable to lead to a collective dispute and for the adjustment of which the special system of conciliation and arbitration referred to above has been devised.

The Parties and their Representatives. — The parties to an action before the labour courts may retain the services of advocates or of other persons to represent them, but the court specifies the amount of the fees to be paid to the advocate by the salaried or wage-earning employees in the event of a judgment being given in their favour. A decision of the court overrules any agreement between the advocate and the parties for the payment of a higher fee. The court also decides whether or not an ordinary representative is entitled to receive any remuneration for his services. It is the latter's duty to furnish the court with the necessary particulars on which to base a ruling.

In actions resulting from industrial accidents, it is the judge's duty to appoint a guardian to protect the interests of the victims who are under a disability and have no legal representative. The victims' nearest relatives are preferably to be chosen for the purpose.

Procedure

A characteristic feature of the rules governing the procedure for the labour courts is that they contain special provisions with regard to notices of industrial accidents which must be made, within five days after the accident, by the management of the undertaking or works to the competent labour judge. The latter may, if he considers

[1] *L.S.*, 1926, Chile 1.

it necessary, institute an enquiry at the place where the accident occurred. He then summons the parties to a hearing and on the report of a medical practitioner assesses the compensation due to the injured person or, in the case of death, to his relatives.

The labour inspectors and other competent officials are also under an obligation to notify the labour courts of any infringement of the provisions of the Labour Code by an employer or by the director, manager or head of the undertaking, establishment or place where the work is carried on. They are jointly liable with the company or association or institution by whom they are employed to pay the State Treasury such fines as the courts, after hearing the accused, may fix. The Code does not stipulate any minimum or maximum amount for the guidance of the judge in the assessment of the fines.

Preliminary Proceedings. — In ordinary cases labour disputes are brought before the courts by an application made either orally or in writing and giving all the particulars of the claim. The application is served immediately on the defendant by an employee of the court or by a constable. The parties are summoned to a meeting which must be held not later than five days after the lodging of the application and the court then and there fixes a date for the hearing.

At the hearing the defendant is asked to make an oral statement of his case and the court then invites the parties to settle the dispute by agreement. The conciliation proceedings may be held in private and the parties ordered to appear in person.

If an agreement is reached it is recorded in a minute signed by the judge and the parties, and henceforth has the same force as a judgment of the court. When conciliation fails either in whole or in part, the matters still in dispute are remitted to the court for trial.

The Trial. — The proceedings at the trial are also very simple. A party is not allowed to produce more than two witnesses on each point specified by the judge unless an agreement to the contrary is concluded between the parties. The judge examines the witnesses on oath. The parties may cross-examine them. The judge may also fix a time-limit not exceeding five days for the examination of witnesses who reside elsewhere than at the place where the court meets.

Documentary evidence may be produced at any time during the trial provided the court is satisfied that such evidence could not have been offered at the first hearing. The court may *ex officio* order such expert enquiries as it deems useful to clarify the situation and facilitate the decision.

Judgment is given by default whenever one of the parties fails to appear at the trial.

Judgment and Execution. — The judgments of the labour courts are delivered in the same form as judgments of ordinary courts of law. Among other particulars they give the grounds for the decision and specify which party shall bear the costs of the action. A judgment becomes enforceable from the time it is signed by the judge and countersigned by the clerk of the court, and a copy thereof is filed in the archives of the court.

The execution of the judgments of the labour courts may be enforced by a distress warrant issued at the request of one of the parties or *ex officio* by the court. The warrant specifies the amount and nature of the property to be seized. The Code lays down the procedure to be followed according as the distress is to be levied upon money, goods or real estate.

The rules of procedure which apply for the execution of the decisions of the local labour courts also apply for the execution of the judgments rendered by the labour courts of appeal.

Appeals. — An appeal will lie to the labour court of appeal against the judgment of a labour court when the amount of the claim exceeds 1,000 pesos or, in cases based on an infringement of social laws, when the fine proposed exceeds 500 pesos. A right of appeal exists in all cases which cannot be estimated from the pecuniary standpoint.

The time-limit for lodging an appeal is three days reckoned from the time of the communication of the judgment to the party concerned. The appeal does not affect decisions given by the inferior court in the course of the proceedings, other than decisions authorising or refusing precautionary measures. There can be no appeal against a decision which put an end to the proceedings or made their continuation impossible.

The appeal court must render a decision before the expiration of a period of five days after the court has received all the documents pertaining to the case. Within two days after the decision has been issued the file is returned to the inferior court for the execution of the judgment. There is no recourse against the decision of the appeal labour court.

3. Results

As the labour courts in Chile have been in operation for only a few years it is not possible to give detailed statistics of their activity. It may suffice to reproduce here certain figures which are available for the year 1936 in order to call attention to the important part played by the labour judiciary in the administration of justice.

The statistics which have been compiled for 1936 [1] show that the number of complaints lodged during the year was 39,261. Of that number, 34,027 actions were brought before the 31 special labour courts then in existence, and 5,234 before the 61 tribunals presided over by judges of the ordinary courts of law in the departments where there is no special labour judge.

Of the total number of cases settled by judicial decision in the course of the year, there were 3,316 decisions in favour of the employers and 3,291 in favour of the wage-earning and salaried employees. But a larger number still, namely 4,527 cases, was settled by agreement between the litigants. Moreover, 3,168 cases came to an end as a result of their being abandoned by the parties for some reason or other.

At the present moment there are no data with regard to the number of appeals which may have been lodged before the labour courts of appeal.

4. Summary

The judicial system in force in Chile for the settlement of individual labour disputes consists of local labour courts composed of a single judge, and of appeal labour courts composed of a judge as chairman and two assessors chosen, one from among the employers and one from among the wage-earning or salaried employees. In maritime cases the assessors are the shipowners and an officer or a member of the crew. In all cases the members of the labour courts are appointed by the President of the Republic.

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[1] Cf. "La Hora" (Santiago de Chile), 10 June 1937.

The decree which establishes the labour courts determines their territorial jurisdiction. Practically all individual labour disputes fall within their competence. The proceedings before the labour courts are governed exclusively by the special rules of procedure contained in the Labour Code. The parties to an action are entitled to employ representatives.

An appeal against the decisions of the local labour courts may under certain conditions be lodged before the labour court of appeal of the district whose decisions are final.

CZECHOSLOVAKIA

1. Introduction

The territory comprised within the boundaries of the Republic of Czechoslovakia, which came into being with the signing of the Treaties of Peace at the end of the world war, once formed part of the Dual Monarchy of Austria-Hungary, with the exception of the relatively small Province of Hlučin which belonged to the former German Empire. Consequently the history of Czechoslovak labour legislation is closely connected with that of Austria-Hungary [1]. From the time Czechoslovakia became an independent State until the year 1931, its labour judicial system was governed by the laws which had prevailed in that territory under the Austro-Hungarian Monarchy, particularly the Act of 27 November 1896 respecting industrial courts.

This 1896 Act provided for a somewhat complete system of labour tribunals for the judicial settlement of individual labour disputes. The industrial courts established in virtue of that Act were composed of a professional judge as chairman and of four assessors, that is, two employers and two workers appointed from lists drawn up respectively by representative bodies of employers and of workers. They exercised compulsory jurisdiction on various labour matters in most parts of the State. But, as might be expected, the changing economic conditions in the development of a new country necessitated certain changes also in its labour judicial system. This was accomplished by the enactment of the Labour Courts Act on 4 July 1931 [2].

2. The System in Force

The labour courts set up under the Labour Courts Act of 4 July 1931 are not essentially different from the industrial courts previously in existence. The purpose of the Labour Courts Act was principally to lay down more detailed rules as regards the composition of the labour tribunals and the procedure to be followed and particularly to extend the competence of the labour tribunals to a wider range of subjects in view of the new economic developments. It also empowers the labour courts to serve as conciliation boards for collective disputes submitted to them by mutual agreement of the parties. The latter

[1] Cf. monograph on Czechoslovakia, first chapter dealing with "Economic Background and Development" in *Conciliation and Arbitration in Industrial Disputes*, pp. 307 *et seq.*

[2] *L.S.*, 1931, Cz. 3.

aspect of the question has already been dealt with by the International Labour Office in its study of conciliation and arbitration in Czechoslovakia [1]. The labour judiciary consists of labour courts of first instance only. Appeals against the decisions rendered by the latter must be lodged before the ordinary courts of appeal to which are added in certain cases an employers' assessor and a workers' assessor under the conditions set forth below.

Constitution and Composition of the Courts. — The labour courts are established by an Order of the Government in places where economic and social conditions render it necessary. In the localities where two or more district courts are situated, a single labour court may be established for the area of some or of all of the district courts. In conformity with the terms of the Labour Courts Act the special labour courts have replaced the probiviral courts which existed under the earlier laws on labour tribunals. Probiviral courts had been established only for Bohemia, Moravia and Silesia.

The territorial jurisdiction of the labour courts corresponds to that of the district court of the area where the labour court is set up. By way of exception the jurisdiction of the labour court at Prague extends to that of all the district courts within the limits of the city of Prague; the territorial jurisdiction of the labour court at Brno extends to the area of all the district courts in Brno and its surroundings. These two labour courts have been in operation since 1 January 1932. Moreover, other labour courts were set up whose territorial jurisdiction coincides with that of the district courts in the area of which they were set up. They came into operation on 1 September 1932.

In the districts where the conditions for the establishment of separate labour courts are not fulfilled, the Government may by Order establish in the district courts a labour disputes division. The main difference between the special labour disputes divisions of the district courts and the separate labour courts is that the latter are not connected administratively with the ordinary district courts, whereas the special labour disputes divisions actually form part, from an administrative point of view, of the district courts to which they are attached. But the labour disputes divisions are established and operate under the same conditions as apply to the separate labour courts.

The clerical staff of the labour courts is appointed by the president of the regional court of law.

All the expenses entailed by the working of the labour courts are borne by the State.

The labour courts are composed of a chairman, one or more vice-chairmen according to circumstances, and of a requisite number of assessors and substitutes. The chairman and vice-chairmen are appointed by the Minister of Justice from among the professional judges exercising their functions at the seat of the labour court. Special consideration is given to their knowledge of labour law and social conditions.

The Minister of Justice is also entrusted with the task of fixing the number of assessors to be allotted to each labour court. But the president of the superior court of law in the area of the labour court makes the appointments. The assessors as well as their substitutes are chosen in equal numbers from among employers and employees nominated by the central industrial organisations of employers and employees respectively.

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[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 315 *et seq.*

The assessors are appointed on the basis of the number of the members of the industrial organisation which makes the nominations and in the order in which they are proposed by the organisation concerned. At the same time, account must be taken of the number of those connected with the industry concerned in the district where the labour court is situated.

To be eligible as an assessor, it is necessary to be a Czechoslovak national in the sense of the Labour Courts Act, that is, to belong to the category of employers and workers who are under the jurisdiction of the labour courts, to have reached the age of thirty years and possess the right to vote in municipal elections.

The Act contains various provisions concerning the qualifications of assessors and specifies that further regulations may be made by Government Order. It does not fix the age-limit at sixty years, but it lays down that an assessor may refuse to accept appointment or resign from office if he is more than sixty. The term of office of an assessor is three years, subject to re-appointment.

While the duties of chairman and vice-chairmen are discharged under the judicial oath of the incumbents, the assessors must take an oath before the chairman to perform their duties conscientiously and impartially and to observe official secrecy. No remuneration is granted to assessors, but they are entitled to the reimbursement of the expenses incurred in the performance of their official duties. In addition, assessors belonging to the class of employees or small employers are entitled to compensation for actual loss of earnings in respect of each attendance. The amount of such compensation is fixed by a Government Order. Assessors who do not discharge their duties satisfactorily are liable to the payment of a fine.

Competence of the Courts. — The labour courts have exclusive competence, irrespective of the sum involved, in all disputes between an employer and an employee or between employees of the same employer which arise out of an individual contract of employment, of service or of apprenticeship. But the Act allows some exceptions with regard to matters falling within the jurisdiction of special bodies set up for the adjustment of certain disputes which may arise in connection with the mining industry or State undertakings. Moreover, it is possible to exclude the jurisdiction of the labour courts by referring the dispute to an arbitrator in compliance with a collective agreement or some other arrangement arrived at between the organisations of employers and employees to which the parties belong.

Workers and employers who are not members of the trade organisations which are parties to the collective agreement or to a similar agreement may by a declaration in writing become parties to the arrangement for the settlement of disputes by an arbitrator.

The plaintiff may at his option institute proceedings before the labour court of the judicial district where the defendant is domiciled or of the area where the undertaking is situated or, in the case of persons employed outside the premises of the undertaking, before the court in the area of which the defendant is domiciled or where the work is or was to be done, or where the wage or other remuneration is or was to be paid.

The labour court decides *ex officio* its own competence. For instance, if it decides that an ordinary court of law or some special arbitration court is competent in the matter, that decision binds the latter, but

vice versa a similar decision on the part of the latter would bind the labour court before which the action is subsequently brought.

In the districts where there is no separate labour court or no labour division of a district court, the ordinary district court is competent to deal with labour disputes. But in that case the proceedings are governed by the rules of procedure which apply to labour courts, except those relating to assessors.

The Parties and their Representatives. — The parties to an action before the labour courts may be represented by any person who is *sui juris* and has the necessary qualifications to sue or be sued. But the representative may not be an advocate, even though he be an official of the undertaking which is a party to the action, unless the amount of the claim is more than 1,000 crowns. In appeal cases the services of an advocate may only be retained if the sum involved is more than 300 crowns. Where the representation by advocates is permitted, their fees may be subject to special rates fixed by Government Order. The parties are only required to be represented by an attorney in proceedings before the Supreme Court.

Procedure

The proceedings before the labour courts are governed in part by the rules laid down in the Labour Courts Act and, where these are insufficient, by the provisions which apply to civil actions before the district courts. The special rules contained in the Act are briefly outlined below.

Preliminary Proceedings and Trial. — The labour court must fix according to the needs of the case and publish the days and definite hours when the parties to a dispute may appear without summons to institute proceedings or effect a settlement by conciliation. The court functions by means of chambers consisting of a chairman or vice-chairman and two assessors selected one from each group of employers and of employees. By way of exception the assessors must both be employees' assessors in actions brought against each other by employees of the same employer if the dispute arises out of their common employment. The assessors are summoned to individual sessions by the chairman of the labour court according to a roster drawn up in advance for each industry, and having regard to the occupation of the parties.

The Act also contains detailed rules concerning the challenge of the members of the court who may be disqualified from taking part in the preliminary or judicial proceedings on the same grounds as judges of the ordinary courts of law. The challenge, however, is not admissible after the party, without invoking the grounds of challenge known to him, has begun the action.

The actual proceedings begin with a preliminary hearing of the parties before the chairman or vice-chairman for the purpose of disposing of the matter by means of an agreement between the parties, or by a judgment by default or on the admission or withdrawal of the claim, or for the purpose of deciding in regard to objections to the effect that the case does not fall within the jurisdiction of the labour court, that the labour court is not competent for the locality or the matter in question, that an action is pending in respect of the same matter or

that an enforceable decision has been given thereon. If the court is declared competent and no settlement can be arrived at during the preliminary hearing, the parties may waive the participation of the assessors, and the chairman then and there tries the case and delivers judgment. Otherwise the trial is held as soon as possible before a chamber and, if possible, the case should be settled in a single session. At the trial the parties as well as the witnesses and experts may be questioned by the assessors with a view to clearing up the facts of the case.

Judgment and Execution. — The labour court adopts its decisions by a majority vote which is conducted in private. If an executory judgment is delivered, the court will, at the request of either of the parties, declare it to be enforceable. The execution may be based either on the judgment of the court or on the amicable agreement reached under its auspices. A warrant for an attachment may also be issued on the basis of the judgments or rulings of the labour courts.

Appeals. — An appeal against the judgment of a labour court may under certain conditions be lodged before the regional court of appeal for the area in which the labour court is situated. The application for appeal may be made either in writing, or orally, to be recorded in writing at the labour court, within fifteen days of the communication to the party concerned of a copy of the judgment.

In the cases where the amount involved does not exceed 300 crowns, an appeal will lie if the labour court has declared an appeal admissible on account of the fundamental importance of the decision or when the proceedings in the labour court are deemed null and void for one of the reasons specified in the Act, for instance, if a decision has been rendered in a matter which does not fall within the jurisdiction of the labour court.

In such cases the court of appeal holds its session in private and is composed of only three professional judges. Its decision is final. If the appeal is allowed, the judgment of the labour court and, if necessary, the previous proceedings, which may be null and void, are quashed. If the ground for nullification consists in the fact that the decision was rendered in respect of a subject matter which was outside the jurisdiction of the labour court, the claim is rejected ; in the other cases the matter is referred back to the labour court for a new trial.

When the amount involved in the dispute exceeds the sum of 300 crowns the grounds for the appeal need not be specified in the application. Also in that case the composition of the appeal court is modified : to the three professional judges, of whom one acts as president of the tribunal, are added two assessors ; the procedure implies that a new trial will be held on the lines indicated by the parties in their application.

The rulings of the labour court or of its chairman, and decisions as to costs, may also be contested in this way, provided the applicant does not at the same time impugn the main judgment. The regional court of second instance gives the final decision in these appeals.

The Labour Courts Act recognises the principle that decisions of the appeal court may be impugned before the Supreme Court. But no such appeal to the Supreme Court is allowed when the sum involved does not exceed 300 crowns. It is only admitted in certain cases when the amount at issue does not exceed 2,000 crowns. For instance, a final appeal against the decision of the court of appeal modifying the decision rendered in the court of first instance is permitted. But as a rule no further appeal is allowed against a decision of the appeal court affirming

the decision of the lower court; nevertheless such an appeal may be granted when the court of appeal in its judgment has authorised the further appeal on the ground that a question of principle is at stake.

3. Results

In Czechoslovakia, as in the other countries which possess a system of special labour courts comprising employers' and workers' assessors, the popularity of the special labour tribunals is due, in part, to the fact that the procedure in force before them is usually more expeditious and less costly than in the ordinary courts of law, and, in part, to the fact that the parties to a labour dispute have a great deal of confidence in the practical knowledge of their lay representatives on the bench.

Moreover, the passage of the Labour Courts Act of 4 July 1931 establishing a uniform system of labour courts or labour courts divisions in the ordinary courts of first instance has marked an increase in the number of labour disputes brought before these special tribunals. For instance, in 1931, the year immediately before the coming into operation of the Labour Courts Act, the number of labour disputes dealt with by the labour tribunals then in existence was only 7,939. Under the new system, that number, as may be seen from the table [1] given below, was more than doubled in 1932 and almost trebled in 1933. These figures must not be interpreted as meaning a proportionate increase in the causes of labour conflicts, but rather as a sign that less labour disputes were being handled by the ordinary courts of law.

The remarkably large proportion of cases which were settled by conciliation measures and also the proportion between the number of disputes brought before the labour courts at the instigation of employers, workers or apprentices, are a noteworthy feature of the system.

In 1935, for instance, 23,115 disputes were brought before the labour tribunals. With those pending from the preceding year the courts were required to deal with 25,599 disputes, of which 23,338 were settled in the course of that year. Out of these, 4,757 were settled by trial and judgment and 6,630 by amicable arrangement before the court, the balance being disposed of by judgment by default or by judgment, by acknowledgment or withdrawal of the claim and by other decisions. Hence the decisions rendered after trial amounted to 20.38 per cent. of the total number settled, whereas 28.41 per cent. were settled by conciliatory proceedings.

Of the total number of complaints 21,935 were lodged by workers and 187 by apprentices, while the employers instituted proceedings in 993 cases only. Hence 97.9 per cent. of the complaints were lodged by workers, 0.8 per cent. by apprentices and 4.3 per cent. by employers. For the types of cases dealt with by the courts and the nature of the decisions rendered, the reader is referred to the Report of the Bureau of Statistics of the Czechoslovak Republic.

The increase in the number of disputes handled by the labour judiciary in 1935 as compared with 1934 is accounted for by the fact that from September 1934 onwards two new labour courts and twenty-

[1] Taken from the Report of the Bureau of Statistics of the Czechoslovak Republic: *(Mitteilungen des Statistischen Staatsamtes der Tschechoslowakischen Republik)*, published annually since 1924.

eight new labour divisions began to function. It should be pointed out, however, that labour courts or labour divisions have not yet been set up in every judicial area, so that certain individual labour disputes are still adjudicated upon by the ordinary courts of law. But proof of the satisfactory work accomplished by the labour judiciary may be inferred from the statistics given below, showing how few appeals have been lodged against the decisions of the labour courts.

Important decisions rendered by the labour courts are reported in the Official Bulletin of the Ministry of Justice, which constitutes a survey of legal precedents in labour matters.

Number of individual labour disputes [1]									Number of appeals					
		Lodged by			Settled by				Against judgments				Against rulings	
									Amount involved					
Year	Pending and lodged during the year	Employers	Workers	Apprentices	Trial and judgment	Conciliation	Other decisions [2]	Total	Not more than 300 Kč		More than 300 Kč		Pending and lodged during the year	Settled
									Pending and lodged during the year	Settled	Pending and lodged during the year	Settled		
1931	7,939	377	7,338	100	1,530	2,245	4,052	7,827						
1932	16,607	696	15,696	103	1,893	4,093	7,968	13,954	61	54	386	278	140	135
1933	23,148	1,062	19,269	164	3,703	6,159	10,869	20,731	119	116	1,209	991	365	350
1934	22,886	979	19,326	164	4,059	5,614	10,729	20,402	98	86	1,609	1,230	516	496
1935	25,599	993	21,935	187	4,757	6,630	11,951	23,338	183	175	2,096	1,625	578	546

Mitteilungen des Statistischen Staatsamtes.

[1] These include judicial decisions by default, by acknowledgment or withdrawal of the claim, and other decisions.

4. Summary

The judicial system in existence in Czechoslovakia for the compulsory settlement of individual labour disputes consists of a number of labour courts established in virtue of the Labour Courts Act of 4 July 1931. These labour courts are set up by the Government in the various districts in which they are deemed necessary in view of the prevailing social and economic conditions. In certain areas, however, merely labour disputes divisions are constituted in connection with the ordinary district courts of law.

A chairman and one or more vice-chairmen selected from among professional judges, and two assessors, one representing the employers and one the employees, compose the labour courts. Their competence extends to practically all labour disputes between an employer and an employee or between employees of the same employer, provided the dispute is one which is based on an individual contract of employment, of service or of apprenticeship. But their jurisdiction may be excluded by a collective arbitration agreement.

The Labour Courts Act contains special provisions concerning the procedure to be followed in the labour courts. The judgments of

the latter are enforceable by attachment in the same manner as the decisions of the ordinary courts of law. There are no special labour courts of appeal, but an appeal against the decisions of the labour courts may nevertheless be brought before the regional court of appeal and from the latter it may under certain conditions be taken to the Supreme Court.

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FREE CITY OF DANZIG

A judicial labour system identical to that of Germany was instituted in the Free City of Danzig by the Labour Courts Act of 4 July 1928 [1]. A difference to be noted, however, is that Danzig, since it occupies a very small area, has only one district labour court, which also serves as the final court of appeal in labour matters and consequently renders unnecessary the establishment of a Supreme Labour Court as in Germany.

Again, following the example set by Germany when it passed the far-reaching National Labour Act on 20 January 1934, the Senate of the Free City promulgated on 8 May of the same year an Act [2] for the regulation of labour in Danzig, including, as in Germany, the appointment of Labour Trustees and the creation of Social Honour Courts. This Act necessitated the adoption of certain amendments to the Labour Courts Act of 1928 in order to bring it into conformity with the new regime. The principal changes were made at the end of June 1934 [3].

DENMARK

1. Introduction

In Denmark the history of the special institutions for the settlement of labour disputes goes back only to the very last years of the nineteenth century. As a result of a general lock-out which in 1899 affected several branches of the building industry, an agreement was reached on 5 September of that year by the Danish Employers' and Masters' Association and the Danish Federation of Trade Unions laying down conditions, which to this day still govern industrial relations in Denmark, and providing at the same time for the creation of a permanent arbitration court for the settlement of disputes arising out of breaches of the arrangement they reached. The arbitration court contemplated was to judge, as would ordinary courts of law, disputes between employers and workers represented by their respective organisations. Some idea of the nature of the proposed arbitration court may be derived from the fact that pending the establishment of that court its functions were to be discharged by the Court of Appeal at Copenhagen. Although called an arbitration court the new institution was conceived as a judicial tribunal with limited jurisdiction.

It was provided that the arbitration court should be composed of seven members, three of whom would be elected by the employers' federation and three by the workers' federation, and these six together

[1] *L.S.*, 1928, Danz. 2.

[2] *Gesetzblatt für die Freie Stadt Danzig*, 17 May and 6 and 27 June 1934; *Soziale Praxis*, 14 June 1934.

[3] *Gesetzblatt für die Freie Stadt Danzig*, 30 June 1934, No. 49, s. 473, (*Erratum*, No. 50, p. 477), 13 January 1937, No. 2, p. 6, and 10 February 1937, No. 14, pp. 134-135. See also, *Staatsanzeiger*, 10 June 1936, No. 64, p. 351.

were to select a chairman who must be a Danish jurist. In 1900, *the parties concerned having agreed upon the establishment of such a court, an Act of 3 April 1900*[1] *laid down the rules for the summoning of witnesses. On 18 May of the same year a Royal Decree gave to this court a permanent character.* But the constitution of the Central Labour Court, also called the Permanent Arbitration Court, in existence to-day in the Kingdom of Denmark is really based on an Act of 12 April 1910[2] which was subsequently amended by an Act of 4 October 1919[3]. It was not affected by the Conciliation Act of 28 February 1927[4].

In Denmark as in other Scandinavian countries the special machinery for the settlement of labour disputes makes a clear distinction between disputes which relate to existing rights, and those which concern the opposing and undefined interests of parties. But it is of the utmost importance to observe that the only disputes on rights which come within the jurisdiction of the Central Labour Court are those which are based on existing collective agreements. They may of course be either individual or collective disputes.

2. The System in Force

Since the non-compulsory procedure governing the adjustment of collective disputes has already been described in the International Labour Office study of conciliation and arbitration in industrial disputes in Denmark[5], only the judicial machinery for the settlement of individual or collective disputes which fall within the category of "disputes about rights" will be dealt with here.

In the first place it should be pointed out that an Act relating to apprenticeship dated 30 March 1889 and an amending Act of 6 May 1921 provide for the setting up of special arbitration courts with judicial powers to deal with disputes connected with articles of apprenticeship, in particular with those affecting the period of apprenticeship, the quality of the instruction to be given thereunder, and with differences arising out of the cancellation of the articles of apprenticeship on the ground of improper conduct or gross neglect on the part of either the master or the apprentice, and by reason of the absence of the master or the illness of the apprentice.

The special arbitration courts are composed of a chairman selected by the district authorities and of four other persons chosen, two by each of the litigants. The persons thus selected must be men or women of full age and qualified in the trade concerned. Any one who is entitled to start arbitration proceedings may do so by applying either verbally or in writing to the chairman, who is the only permanent member of the court. The chairman then orders the parties to call their arbitrators for a meeting which must be held within a period of eight days from the time the application was made. The

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[1] *Annuaire de la Législation du Travail*, Brussels, 1900, p. 427.

[2] *Ibid.*, 1910, p. 138.

[3] *Ibid.*, 1914-1919, Vol. 1, p. 306, and *L.S.*, 1929, Den. 2.B.

[4] *L.S.*, 1927, Den. 1; amended 1934, Den. 1.

[5] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 350 *et seq.*

decisions of the arbitration courts are taken by a majority vote and are without appeal. Their execution is subject to the same rules as apply to the judgments of the ordinary courts of law.

Since these *ad hoc* arbitration courts are competent to judge disputes in connection with articles of apprenticeship only, the place they occupy in the judicial labour system is of no real importance and for that reason attention will be centered in this monograph on the Central Labour Court set up in virtue of the 1910 Act. The amending Act of 4 October 1919 did not introduce any very great changes. It affected the composition of the Court by raising the number of substitutes from six to sixteen and extended the term of office of the members from one to two years. The ordinary courts of law have no jurisdiction whenever a party to the dispute has a right to bring his case before the Central Court, except where the claim is one for the payment of salary, and the organisation to which the employee belongs has not, by bringing the matter before the Central Court, renounced on his behalf the right to bring the complaint before the ordinary courts.

Moreover, the 1919 Act specifies that the right of the parties to be represented by counsel in proceedings before the Court is subject to no restrictions, and extends the competence of the Court to disputes affecting persons employed in commerce and offices, in agriculture and horticulture and makes possible further extension of that competence by Royal Decree issued through the Ministry of the Interior.

Constitution and Composition of the Court. — The Central Labour Court is composed of six members and sixteen substitutes appointed in equal numbers by the most representative trade associations of employers and employees. The appointment is effected by means of elections held every two years. A meeting of the elected members and, if necessary, of their substitutes, is called annually for the purpose of electing a chairman and two or, if the Court considers it necessary, three vice-chairmen. On the recommendation of the Court the Minister of the Interior appoints a Clerk for the Court.

The members and the substitutes must be Danish nationals in full possession of their civic rights. The chairman and vice-chairmen as well as one representative for each of the employers' and employees' groups must satisfy the requirements laid down by law for the appointment of permanent judges to the ordinary courts of law.

The Court as a rule sits at Copenhagen but if it deemed it advisable it could sit elsewhere. The Act contains provisions for the setting up of one or more similar courts of arbitration with well-defined spheres of jurisdiction in case there should be too much work for the one Court.

The expenses involved in the administration of the labour judiciary, including allowances for the elected members for each sitting of the Court and the salaries which are paid only to the chairman, vice-chairmen and clerk of the Court, are borne by the State in so far as they are not covered by the costs imposed by awards of the Court.

Competence of the Court. — Disputes based on the agreement of 5 September 1899 referred to above fall exclusively within the competence of the Central Labour Court. Likewise any breach of a collective agreement concluded between an employees' organisation and an employers' organisation or a single undertaking, which includes the individual employer as well as the firm or company, whatever party is responsible for the breach and whether the breach is the act of an organisation or of one or more of its members, may give rise to an action before the Central Court, provided that the agreement contains

no provisions to the contrary and that the proceedings are instituted by the organisation whose rights or whose members' rights are infringed.

The Court is also competent to decide as to the legality of strikes and lock-outs which are declared or continued in alleged violation of a collective agreement, an arbitration award or a previous decision of the Labour Court.

Other disputes between employers and employees may be submitted to the Court, provided the Court by a majority of not less than five consents to deal with them and a general agreement for all disputes or a special agreement for the particular case has been concluded to this effect between an employees' organisation and an employers' organisation or an individual undertaking.

The Parties and their Representatives. — It follows from the wording of the Act that the parties to a suit before the Central Court may be either an organisation or one or more of its members, an individual undertaking, which includes a company, a firm or an individual employer. But proceedings by or against the members of an organisation must always be instituted against or by the organisation to which they belong. And when an organisation or an individual undertaking is itself a member of a federation of organisations, the latter is alone permitted to appear on behalf of the plaintiff or defendant as the case may be, as a party to the action.

The term organisation as used in the Act signifies " *either* a number of employers who utilise employees in industry, handicrafts, commerce and office work, agriculture, horticulture, excavation work or transport, and who in pursuance of an agreement binding upon them all and entered into with a number of employees, are bound to grant the latter certain conditions of employment, provided that the employees fulfil certain obligations on their side, if the employees are utilised by them in the above-mentioned undertakings, *or* a number of employees who by a similar agreement entered into with an employers' organisation or a single undertaking have secured certain conditions of employment in return for the fulfilment of certain obligations, if the said employees are utilised by the employers in question ".

Representation of the parties to an action before the Court is subject to no restrictions. Nevertheless the Court will decide how far a party is entitled to take part in the proceedings with the assistance of two or more advocates and will also decide who is allowed to attend the sessions of the Court in addition to the parties and their counsel.

Procedure

The proceedings before the Central Court are governed for the most part by the rules of procedure which apply in actions before the ordinary courts of law. The few special rules contained in the Arbitration Court Act are briefly described below.

Preliminary Proceedings. — In the event of a declared strike or lock-out the complainant must first send a protest by registered letter, within five days from the notice of the declaration, to the organisation which has, or the members of which have, declared a stoppage of work. Proceedings are begun by submitting two copies of the statement of claim to the Court. Upon receipt thereof the chairman of the Court sends a copy to the defendant, enjoins him to submit his defence within

a fixed period of time and summons both parties to appear at a session of the Court to be held at as early a date as is convenient. Pursuant to the authorisation of the Court the chairman may hold alone a preliminary hearing of the dispute for the purpose of attempting a settlement by agreement between the parties or possibly to obtain further information or explanations from them.

The Trial. — When conciliation fails the parties are summoned to the trial of the action. They are compelled to appear even though the Court is sitting outside the district in which the parties have established their domicile for judicial purposes. It is the Court's duty to see that arbitration agreements are complied with. Refusal on the part of one of the parties to submit the case to an arbitration board in accordance with an agreement previously entered into or any action in contravention of a lawfully issued arbitration award or a decision of the Central Court, shall be deemed to be specially aggravating circumstances.

When a dispute falls within the jurisdiction of the special arbitration courts already mentioned, the Court may dismiss the case on that ground alone unless it appears that unnecessary difficulties or delay would be incurred in obtaining the decision of a special court or again if both parties show a preference for the jurisdiction of the Central Court. In handling such cases the Court has the right to call upon industrial experts for assistance. In all cases the Court may appoint persons to hold enquiries and furnish reports, and summon witnesses to give evidence on oath.

Judgment and Execution. — The Court may not only render a judgment for the payment of a sum of money where such was the nature of the claim, but it may also impose a fine on the party who is responsible for the breach of an agreement or for the declaration or continuation of a strike or lock-out in contravention of the terms of an agreement. Where special damage is proved the fine is paid to the person who has suffered some injury as a result of the offence complained of, otherwise it is paid to the party which brought the action.

The awards of the Court are binding, but an organisation cannot as such be held liable unless it has been a party to the offence which is the subject of the action, or previously entered into an agreement for the purpose of assuming liability. It will be bound by the decision if the dispute arose out of the interpretation of collective agreements of general application or of a general agreement in force between the organisations.

The enforcement of the awards is subject to the rules which governed the execution of the judgments of ordinary courts.

Appeals. — The decisions of the Central Court are final. The only appeal permitted is against the decision of the chairman with respect to the summoning of witnesses and in such cases the matter may be brought only before the superior provincial court within whose jurisdiction the decision was given. The Court itself cannot be considered as a court of appeal from the awards of the arbitration boards [1] set up in the various industries for the adjustment of disputes relating to the interpretation of collective agreements, but collective agreements may provide that it shall serve as a court of appeal in matters in which it has no compulsory jurisdiction.

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, p. 353.

3. *Results*

In the period from May 1910, when the Central Court commenced its activities, to 1935 inclusive the court dealt with a total of 2,185 cases, resulting as follows :

Awards	1,018	= 46.6	per cent.
Settled	905	= 41.4	„ „
Dropped.	262	= 12.0	„ „
Total cases	2,185	= 100	„ „

In order to understand the work, influence and importance of the court, some information should first be given on certain conditions in Denmark which presumably differ to some degree from corresponding conditions abroad — with the exception, in certain respects, of Scandinavia.

It should be noted that the chief organisations of the workers and of the employers, the Amalgamated Trades Unions (established in 1898) and the Danish Employers' Association (established in 1899), represent, by their large membership, most of the organised workers and employers, and that by their financial strength, their effective forms of organisation and well-arranged administration they far exceed all other Danish workers' or employers' associations in power and influence.

From the bottom upwards the organisation more or less follows the outline below, the joiner and cabinet-maker trade being taken as an example :

An organised joiner is a member of the local joiners' trade union of his town ; that union is a member of the National Union of Joiners, which is a direct member of the Amalgamated Trades Unions.

An organised master-joiner in the same town is a member of its local Master Joiners' Association, which is a member of the Central Association of Master Joiners for that part of the country, and this central association is a member of the Danish Employers' Association.

As has already been stated, the Acts of 1910 and 1919 lay down that the court must superintend the observance of arbitration agreements between the parties ; § 17 of the Acts also empowers the court to decline to handle cases in the absence of satisfactory rules as to arbitration between the parties. When the Act of 1910 was being drafted the two chief organisations referred to agreed upon certain guiding principles for " rules for dealing with trade disputes ", and rules based on these guiding principles have in the course of time been embodied in most Danish collective agreements. In addition, however, it was laid down by an Act of 2 May 1934 that if a collective agreement when made did not contain other satisfactory rules for the settlement of industrial disputes, the guiding principles agreed upon were to govern the relations between the parties.

As the years have passed trade arbitration awards through the medium of local conciliation boards and courts of arbitration have acquired great and far-reaching importance all over the country and have decidedly lightened the work of the Central Court, for local arbitrations actually settle, in an easy and moderate manner, the greater part of the conflicts arising out of the daily work.

It is against the background of the generally good and rational conditions sketched above that the work and influence of the Central Court must be viewed, and presumably it is not unconnected with

these circumstances that the results at the *preliminary hearings*, where the President alone represents the court, have been so important ; as shown in the table above, 905, or 41.4 per cent., of 2,185 cases dealt with were settled amicably, whereas 1,018 (46.6 per cent.) were decided by the court, and 262 (12 per cent.) were dropped, and even of these 262 there were several which had first been handled at a preliminary hearing, with the result that the claims were withdrawn, so that the real percentage of cases settled by conciliation is higher than that shown.

In this connection it may be noted that in recent years it has become the practice, where the point of the dispute is disagreement on the *amount* of the sum due, for the representatives of the chief organisations at preliminary hearings usually to leave it to the President of the court to fix the sum to be paid ; this also gives results previously unobtainable by the parties themselves.

4. Summary

The Danish system for the judicial settlement of labour disputes comprises *ad hoc* arbitration courts to deal with disputes relating to apprenticeship, and a Central Labour Court composed of six members and sixteen substitutes elected for two years by the most representative trade associations of employers and employees. Each year the constituent members of the Court elect a chairman and two or three vice-chairmen.

The jurisdiction of the Central Court is compulsory in some cases and voluntary in others. It is competent to deal with individual as well as collective disputes based on collective agreements.

When the parties to an action are members of an organisation, the latter must assume responsibility for the action. Representation by counsel is permissible in all cases.

At a preliminary hearing of the case by the chairman of the Court an attempt is made to settle the dispute by conciliation. The proceedings at the trial are governed in a general way by the rules of procedure which obtain in the ordinary courts of law. The decisions of the Central Labour Court are final and enforceable in the same manner as the judgments rendered by the regular judicial tribunals.

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(5) Den kollektive Arbejdsoverenskomst som retsligt Problem.
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ECUADOR

1. Introduction

Special machinery for the settlement of labour disputes is of quite recent date in Ecuador. The only legislative measures taken in that respect are an Act dated 6 October 1928 concerning the "procedure in actions at law arising out of employment relations"[1], which does not appear to have been put into operation and has since been replaced by an Act on the same subject dated 24 April 1936[2]. The latter reproduces the main provisions of the earlier Act, and lays down more detailed rules of procedure. It also raises from 500 to 1,000 sucres the amount beyond which an appeal to the district superior court is allowed against the decision of the labour judge and authorises a final appeal to the Supreme Court.

2. The System in Force

Neither of these Acts provides for the establishment of separate labour tribunals composed of persons specially qualified to deal with labour questions. They merely stipulate that labour disputes are to be settled exclusively by the labour commissaries in the localities where there are such officials, and in the other localities by the superior police authority which shall not have the right to delegate its powers in this respect. Even in the localities where there is a labour commissary the chief police authority also exercises jurisdiction in regard to labour matters when for some reason or other the commissary is unable to discharge such duties.

The matters to be settled by the above-mentioned authorities include all disputes, irrespective of the amount at issue, between employers and wage-earning or salaried employees arising out of employment relations, including claims for compensation due on account of industrial accidents and also for occupational diseases.

Procedure

With a view to ensuring a prompt settlement of labour disputes the Act of 24 April 1936 lays down special rules of procedure which need only be summarised here. They have one characteristic which must be emphasised, namely, that their obvious purpose is to avoid all unnecessary delays and to procure for the litigants a speedy and fair trial.

Preliminary Proceedings. — The party, employer or employee, who decides to lay a claim before the judicial authorities mentioned above must go before either the labour commissary or the chief police officer, who is to act as judge in the case, and make his complaint orally or in writing. If it is made orally the judge must see to it that it is recorded in writing. He then fixes the date and hour for the prelim-

[1] *L.S.*, 1928, Ec. 6.

[2] *Registro Oficial*, 28 April 1936, No. 176, p. 981, and 20 July 1936, No. 244, p. 689.

inary hearing and issues a summons ordering the defendant to appear at the hearing. The summonses are served on the defendant or a member of his family or a neighbour in the form of a notice in writing, which, if necessary, may be renewed as many as three times and on different days.

As soon as a complaint is received by the judge, he must also notify the labour inspector, who then makes an investigation of the dispute and submits a written report upon it to the judge.

In actions against the State, as employer, the summons must be addressed directly to the Attorney-General when the case comes up in the province of Pichincha ; in the other provinces it is addressed to the fiscal representative of the district, who follows the instructions of the Attorney-General.

At the preliminary hearing the judge endeavours to adjust the conflict by amicable arrangement between the parties. The conciliation agreement signed by the litigants and by the judge puts an end to the dispute.

The Trial and Judgment. — If conciliation fails or if the defendant fails to appear after service of the summons or to furnish a sufficient reason for his failure so to do, the judge at the request of the other party or *ex officio* renders judgment by default. But if reasons are given to excuse the absence of the defendant they are dealt with at the trial along with other matters. No more than three witnesses can be produced for each fact to be proved.

In the case of claims for compensation due as a result of an industrial accident, the invalidity of the claimant must be estimated in accordance with all the available information, particularly that of the police officer who made the investigation at the time of the accident.

The necessary investigations may be ordered for the elucidation of the facts, but the trial can be postponed once only at the discretion of the judge.

The Act empowers the judge to disallow forthwith any malicious application made for the purpose of delaying the proceedings or causing prejudice to the other party and he may even impose a fine not exceeding 1,000 sucres on this ground. Against such a decision the Act does not appear to allow any appeals.

Appeals. — When the judgment condemns one of the parties to pay a sum of not more than 1,000 sucres, no further recourse is permitted except a " queja ", which may be translated as an objection to be lodged before one of the judges of the ordinary courts of law in the province. But if the party is condemned to the payment of a sum exceeding 1,000 sucres, or the amount at issue is indefinite, then he may appeal to the district superior court of law which, after securing such additional evidence as it may deem necessary, decides the case on its merits. Against the decision of the district court a final appeal may be made to the Supreme Court.

The Act provides that if the judgment of the Supreme Court confirms the decisions of the labour tribunal and of the district court, then the appellant must pay the costs of the action in the three courts. Moreover, he will be subject to a fine which may vary between 10 and 50 sucres if he is a worker, or between 50 and 100 sucres if he is an employer.

Owing to the short period of time during which the special procedure for the settlement of individual labour disputes has been in operation, there are no statistics available to show the results achieved.

3. Summary

The position in regard to the compulsory settlement of labour disputes in Ecuador is the following. The labour commissaries in each canton, when they are able to act, and, failing them, the chief police authority, have exclusive competence to deal with practically all labour disputes.

Appeals against their decisions may be made under certain conditions either to one of the judges of ordinary courts of law or to the superior court of the district and eventually to the Supreme Court.

The proceedings before the labour tribunals, consisting of either a labour commissary or the chief police authority in the canton, are governed by the special rules of procedure laid down in the 1936 Act. The procedure before the appeal tribunals is presumably that which applies in all other appeals.

FRANCE

1. Introduction

As early as the thirteenth century joint boards were set up in the City of Paris for the adjustment of certain disputes between merchants and manufacturers. Although those boards do not seem to have discharged judicial functions [1], they paved the way for those set up two centuries later by the tradesmen of the City of Lyons on the authorisation of King Louis XI. These were composed of employers only and were empowered to settle by judicial decision such disputes as arose among the silk manufacturers and later developed to cover disputes between the latter and their wage earners. They were done away with at the Revolution but were re-established a few years later under the Napoleonic regime. A law passed on 18 March 1806 at the request of the Lyons Chamber of Commerce provided for the creation of a probiviral court — *conseil de prud'hommes* — in the City of Lyons and authorised the establishment by Government decree of similar bodies in all other industrial towns and cities.

The *prud'hommes* are wise men or persons particularly well acquainted with the questions which are submitted to them. For many years the probiviral courts were composed of persons chosen almost exclusively from the ranks of the employers. In 1848 a law intended to remedy the situation went to the other extreme and granted the workers too large a representation. It was only in 1853 that the equilibrium between the two elements was finally restored. Since then the principle of the equal representation of employers and workers on the labour tribunals has remained undisputed.

In the course of time several probiviral courts based on the 1806 law sprang up in the different industrial towns, and two Decrees dated 17 June 1809 and 3 August 1810 were passed affecting their consti-

[1] Colin, Paul: *Des Conseils de Prud'hommes*, p. 1.

tution and jurisdiction. One of the fundamental Acts on the probiviral courts is that promulgated on 27 March 1907. It modified the whole system, retaining only a few clauses from the 1806 Act, and after further amendments was finally incorporated in the Act of 21 June 1924[1] which codified the entire law on the labour tribunals in Book IV of the Labour Code.

2. The System in Force

At the present moment the special machinery in existence in France for the judicial settlement of labour disputes, consists of a network of probiviral courts competent to settle by means of conciliation or judgment any dispute which may arise between employers and their wage-earning or salaried employees and apprentices of either sex, provided that the dispute is based on a contract for the hiring of labour in industry, commerce and agriculture. The 1907 Act brought commercial employees within the jurisdiction of probiviral courts, which previously had dealt solely with disputes between employers and manual workers, but it is only since 1932[2] that agricultural disputes have come within their jurisdiction. Such is the case at Aix-en-Provence, Béziers and Montpellier[3]. But so far very few agricultural sections have been established in the probiviral courts. The system of labour tribunals provided for by the 1907 Act still applies in Algeria and in the colonies of Guadeloupe, Martinique and Réunion. But the 1924 Act stipulates that it shall be replaced by the later legislation as soon as a legislative decree extends the application of Book IV of the Labour Code to those French possessions. A Decree dated 16 December 1929[4] provides for the establishment in Morocco of probiviral courts on the model of those in France. A Bill providing for the creation of probiviral courts in Tunisia was adopted by the Chamber of Deputies on 11 March 1937 and placed before the Senate on 27 April 1937[5], but has not yet been adopted.

The expenses incurred in the operation of the courts are shared by the town in which they are established, by the communes comprised within the district of the court and by the State.

Constitution of the Courts. — The probiviral courts are established by administrative decree issued on the recommendation of the Minister of Justice, the Minister of Labour and the Minister of Agriculture, after consultation with the Chambers of Commerce and Agriculture, the advisory Chambers of Arts and Manufactures and the municipal councils of the communes concerned. These courts are set up in every town where industry or commerce is of sufficient importance,

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[1] *L.S.*, 1924, Fr. 3. A law of 1859, amended in 1927, provides for the establishment of probiviral bodies in certain French ports on the Mediterranean to supervise and regulate the fishing industry and also to adjust certain collective disputes. Cf. *L.S.*, 1927, Fr. 1.

[2] Act of 25 December 1932. *L.S.*, 1932, Fr. 11.

[3] Cf. *Journal officiel*, 30 October 1937, pp. 12091-03.

[4] *L.S.*, 1929, Mor. 1. See also the Decree dated 22 July 1937 in the *Journal officiel* of 1 August 1937.

[5] Cf. *Journal officiel*, 27 April 1937, p. 4713.

but only one court can be set up in each town. The Act even provides that the creation of a probiviral court shall be compulsory when it is demanded by the municipal council of the commune where it is to be established and has the approval of the local chambers and councils.

The decree in virtue of which the court is established determines its territorial jurisdiction, which may cover one or more communes and districts. It also specifies the various categories into which the trades, industries and agricultural undertakings in that area are divided, as well as the number of members of the court for each category. In any case the wage-earning and salaried employees must be placed in separate categories. The court may also be divided into sections for the different categories of trades and industries and for agriculture. But commercial occupations, whether they are grouped in one or more categories, must be brought together in a special section.

Composition of the Courts. — The probiviral courts are composed of an equal number of wage-earning or salaried employees and of employers for each category of trades and industries, but their total number must not be less than twelve or an odd number. They are elected for six years at a time, one-half retiring every three years. The triennial retirement affects half of the wage-earning or salaried employees and employers in each category. The retiring members remain in office until their successors are effectively elected.

There are detailed rules governing the election of the members of the court. Each year the mayor of the commune in the district of the court draws up a list of electors. The latter must have completed their twenty-fifth year and have been engaged or apprenticed for the last three years in a trade named in the decree establishing the court, and must have been engaged in this trade within the district of the court for the last year. Women of French nationality may be entered in the electoral lists on the same basis as men.

To be eligible for membership of the court the candidate is required, among other qualifications, to have resided for the last three years in the district of the court, to have attained the age of thirty years and to be of French nationality. Every member who, being a wage-earning or salaried employee, becomes an employer, and *vice versa*, must declare to the public prosecutor or to the president of the court that he has lost the qualification in virtue of which he was elected, and in such a case he ceases to be a member. Disciplinary measures including dismissal from office may be imposed by the Minister of Justice on any member who refuses to take the oath or is guilty of the improper discharge of his duties. Against such measures an appeal lies to the Council of State. Under normal circumstances re-eligibility is the rule.

Once a year the members of the court elect a president and a vice-president from among themselves. This is done by secret ballot and no candidate can be considered as elected unless he has obtained an absolute majority of the votes cast. The number of employers and wage-earning or salaried employees taking part in the vote should be the same for each group. In the event of there being more members of the one than of the other, the younger members of the larger group must abstain in order to maintain a balance.

The Act lays down further rules for the cases where several ballots prove necessary, as when an equal division of votes takes place. It is also stipulated that the chairman and vice-chairman are to be chosen alternately from among wage-earning or salaried employees and from

among employers, but must not both be at the one time from the same category, save in the very exceptional cases provided for in the Act.

When a probiviral court is divided into different sections, the same rules apply for each section, the chairmen and vice-chairmen of which elect annually from among the chairmen of the various sections a general president whose functions are purely administrative.

Each probiviral court or section of a probiviral court comprises a conciliation committee composed of one member of the court who is a wage-earning or salaried employee and one member who is an employer, and of a judicial committee comprising at least two members who are employers and two members who are wage-earning or salaried employees for each category of workers.

The order in which the different members are successively appointed to the committee is determined by the special regulations for each section, which also prescribe the order of rotation whereby one of the members of the committee is designated as chairman.

A secretary and, if necessary, an assistant secretary may be appointed by prefectural order to each court or to each section thereof in order to facilitate communications with the administrative authorities and to ensure continuity in the work of the courts. The court may be dissolved by an administrative decree issued on the recommendation of the Minister of Justice, but even then the secretary and assistant secretary retain their functions.

The Act contains many rules concerning by-elections, the fees granted to secretaries, bailiffs and witnesses and furthermore stipulates that each probiviral court may draw up its own standing orders with regard to procedure.

The members of the probiviral courts receive no remuneration for their services but they are entitled to compensation for the expenses incurred by loss of time and otherwise in the exercise of their functions.

Competence of the Courts. — The probiviral courts are competent to settle in the first instance all claims and counter-claims, irrespective of the amount involved, which are based on a contract of service of employment or of apprenticeship between an employer and his wage-earning or salaried employees or apprentices engaged in commercial, industrial and agricultural undertakings. They are also competent in the case of disputes arising out of common employment of wage-earners but not in disputes between employers among themselves or in disputes between a wage-earning and a salaried employee. They have no jurisdiction with regard to claims for damages on account of accidents to wage-earning or salaried employees or apprentices. Incidentally it may be added that the probiviral courts are entrusted with administrative functions concerning the registration of trade-marks for certain models and designs in the silk industry and also with advising the Government departments on questions of labour law.

Where there are no probiviral courts or when the existing probiviral courts do not comprise competent sections to deal with disputes in certain trades or such trades have not been mentioned specifically in the decree establishing the probiviral courts, the justices of the peace have jurisdiction. They then act as a labour judiciary, that is to say, the claims are lodged, heard and judged under exactly the same conditions as if the parties were before a probiviral court. Where no commercial section of a probiviral court has been established or when the sum involved in a dispute between an employer and his commercial

employee exceeds 2,000 francs, the commercial courts have jurisdiction and their judgments are subject to appeal under the same conditions as apply to the civil courts[1].

A great deal might be said upon what constitutes a commercial or industrial undertaking. The courts have already rendered innumerable decisions on that subject[2], but it would go beyond the limits of this study to attempt a review of their conclusions. However, it should be pointed out here that State establishments and undertakings, whether they be industrial or commercial, do not come within the purview of the probiviral courts.

Moreover the probiviral courts have no jurisdiction when the contract of employment does not imply subordination of the employee to his employer[3].

This is particularly the case with regard to collective agreements which, as the *Cour de Cassation* laid down in 1929, are distinguished from private contracts for the hire of services by the fact that they do not give rise to the obligation between the parties to furnish services and pay wages, and do not create a condition of subordination[4]. Disputes arising out of the interpretation and application of collective agreements are therefore outside the competence of the probiviral courts.

When a dispute arises in regard to work done in an establishment, the territorial jurisdiction of the court is governed by the place where the establishment is situated, and when it concerns work done outside an establishment, the decisive factor is the place where the contract of employment was concluded. Where a court is divided into sections their respective competence is determined by the class of work involved rather than by the nature of the establishment.

The Parties and their Representatives. — The disputes before the probiviral courts may concern employers, wage-earning or salaried employees and apprentices of either sex who are connected with a dispute arising out of an individual contract of service. The Labour Code says that the parties to a dispute may be assisted or represented by an advocate or solicitor. But the Supreme Court[5] has interpreted this clause to mean that representation by an advocate or solicitor is only allowed in the case of the illness or absence of the litigant, just as in the case of representation by an employer or an employee engaged in the same trade, who must produce a power of attorney.

A married woman cannot be represented by her husband except in the case of her illness or absence and provided that he is engaged in the same trade. But the court may authorise a married woman to take part in conciliation proceedings or to appear as plaintiff or defendant before the court, in case of the husband's absence, his inability to act or his refusal to give authority. The court may give the

[1] Cf. note on competent authorities having jurisdiction in labour matters, in *International Survey of Legal Decisions on Labour Law*, 1936-37, France.

[2] COLIN, Paul : *Des Conseils de Prud'hommes*, Nos. 303 *et seq.*

[3] Cf. *International Survey of Legal Decisions on Labour Law*, 1934-35, France, No. 16.

[4] Cf. *ibid.*, 1929, France, No. 27.

[5] On this point see COLIN : *Des Conseils de Prud'hommes*, Nos. 495 and 496.

same authorisation to a minor who is unable to obtain the assistance of his father or guardian. Heads of industrial or commercial undertakings may on all occasions be represented by the acting manager or a salaried employee of their establishment.

Free legal assistance may be granted to persons appearing before the probiviral courts under the same conditions as to those appearing before the justices of the peace.

Moreover, a worker may always be assisted by another worker belonging to the same category, employees by an employee exercising the same trade, and employers by an employer belonging to the same category.

Procedure

Preliminary Proceedings. — The proceedings before the probiviral courts are governed by the rules of procedure laid down in the Act, by those which the courts are empowered to establish for themselves and by certain sections of the Code of Civil Procedure.

The Act lays down that an attempt at conciliation must first be made. The parties may appear voluntarily before the conciliation committee and have the case dealt with. If it is introduced by means of a complaint, the defendant is summoned within a reasonable time by letter from the secretary. The sessions of the conciliation committee are held in private. The agreement reached acquires the force of law and need not be signed by the parties to the dispute. But if the defendant does not appear personally or through a representative or if conciliation proves impossible, the case is submitted to a judicial settlement by the court, either immediately, if both parties consent, or else at the next session.

The Trial. — When conciliation fails and the case remains to be settled judicially at a future session of the court, the litigants are summoned either by registered letter from the secretary of the court or by an ordinary summons in conformity with the rules of procedure applicable to the court or the section thereof. The date, hour and place of the hearing as well as the object of the complaint are specified in the instrument of convocation. If one of the parties fails to appear in person or through an authorised representative, judgment is rendered by default ; if both thus fail, the case is taken off the docket.

The proceedings at the trial are governed by detailed rules of procedure fixed by law and by precedents. The Act for instance lays down that any one of the members of the court may be challenged on the ground that he has a personal interest in the dispute, is related in the fourth degree to one of the litigants, that he has already given a written opinion on the subject of the dispute, or again that he is an employer or employee of one of the parties. The usual defences of lack of jurisdiction, of *litis pendens* and most of those which may be invoked before the ordinary courts of law prevail also before the probiviral courts. Witnesses may be summoned and such investigations and expert enquiries ordered as are deemed necessary for a proper handling of the case. To that end the court, also referred to as the judicial committee, is also entitled to give rulings which may or may not affect the final decision according to the plea ruled upon.

Judgment and Execution. — The decisions of the probiviral courts are taken by a simple majority vote. When there is an equal division of the votes the case is postponed until an early session of the same

tribunal, which is completed by the addition of the justice of peace of the locality. The court thus constituted holds a new trial and if it thinks fit may even order the investigations to be started all over again.

In any case the judgment must be signed by the chairman of the court and give the grounds on which it is based as well as the names of the members who took part in the decision. It must also contain all other relevant details of the proceedings. For instance, if the parties did not attend in person at the trial, mention must be made of the fact that the appointment of representatives was in conformity with the rules of procedure.

No judgment is enforceable until it has been communicated to the party concerned and if it is subject to appeal it does not become enforceable until the expiration of the period allowed for lodging the appeal, unless the court has decided that it can be executed provisionally. The rule is that under certain conditions it may be declared provisionally enforceable, without security, up to a certain percentage of the claim, and for the rest upon payment of a deposit of security by the party who makes the demand for provisional execution.

Acts of procedure, judgments and documents necessary to the execution of the judgments rendered by the probiviral courts are drawn up on officially stamped paper. The unsuccessful party usually pays the costs.

Appeals. — In France there are no special labour courts of appeal. When a judgment is rendered by default because one of the litigants failed to appear or to send a representative at the trial, the party against whom judgment is given may within the time-limits prescribed by the Code of Civil Procedure lodge an objection before the Court which rendered the judgment. A request may also be made to the same tribunal to review the decision on the grounds specified in Article 480 of the Code of Civil Procedure [1]. Otherwise the decisions of the probiviral courts are final, except on a question of competence, unless the amount of the claim exceeds 1,000 francs. When the only claims which exceed the limit of the court's final jurisdiction are the counter-claims, no appeal is allowed.

When the amount involved in the dispute exceeds the sum of 1,000 francs, appeals against the decisions of the probiviral courts are lodged before the civil courts. They are not admissible before the end of the three days following the delivery of judgment, unless provisional enforcement is allowed, or later than ten days after the communication of the judgment. In order to avoid unnecessary delays, the civil courts must give judgment within three months from the date of the appeal. An appeal against the decision of the civil courts may be brought before the appeal courts when the amount at issue exceeds 7,500 francs.

When the amount at issue does not exceed the sum of 1,000 francs, appeals against the decisions of the probiviral courts may even be lodged directly before the civil division of the Supreme Court of Appeal *(Cour de Cassation)* but this appeal for annulment is admissible only when it can be alleged that the labour tribunals have exceeded their powers or infringed the law. The Supreme Court of Appeal may also be called upon to annul the decision rendered by commercial courts or on appeal by a civil court, against the decision of a probiviral court,

[1] Cf. COLIN : *Des Conseils de Prud'hommes*, No. 886.

on the ground that the court in question had no jurisdiction in the case or else that it exceeded its powers or infringed the law. In either case, the decision of the Supreme Court of Appeal must be given within a month from the date of the appeal.

3. Results

The *Annuaire Statistique* of France gives a retrospective summary of the cases brought before the probiviral courts during more than a century. The figures for the first years show that from 1831 to 1835 inclusively, 12,971 cases were submitted to the conciliation committees and 427 to the judicial committees of the probiviral courts. In 1865 the figures were 42,978 and 8,003 respectively, while in 1900 they had already reached 51,921 and 15,195. They continued to increase : 59,333 and 17,359 for 1910, and 70,495 and 21,750 for 1913. No statistics are available from that time until 1920. From 1920 until 1933, which is the last year for which figures are given in the *Annuaire* for 1936, the number of cases brought before the probiviral courts is that shown in the table below. In 1933 there were 249 probiviral courts in France.

PROBIVIRAL COURTS : NUMBER OF NEW CASES SUBMITTED DURING THE YEAR

Year	Conciliation Committee	Judicial Committee
1920	42,032	15,216
1921	47,892	17,141
1922	50,207	17,426
1923	56,449	20,400
1924	61,448	20,974
1925	63,797	22,084
1926	65,422	21,992
1927	65,106	24,125
1928	67,458	24,172
1929	76,976	29,868
1930	85,108	34,135
1931	88,408	38,575
1932	78,272	34,490
1933	76,973	35,578

The above figures show that the number of disputes adjusted by the conciliation committees varies between two and three times the number of disputes settled by the judicial committees. To avoid litigation by resorting to conciliation is always one of the objects of the labour judiciary.

More detailed statistics on the working of the probiviral courts may be found in the *Annuaire* for the respective years. For instance, the *Annuaire* for 1935 contains the following data on the administration of justice in 1932. Out of a total of 78,754 cases dealt with by the probiviral courts, 78,272 of which were submitted during the year and 482 were pending from the preceding year, 31,610 were adjusted by conciliation of the parties and 46,248 were settled by other means, leaving a balance of 896 cases pending at the end of the year. Whereas

of the 39,334 cases lodged before the judicial committees of the probiviral courts, of which 34,490 were lodged during the year and 4,844 had remained pending from the previous year, 36,476 were settled and 2,858 only remained pending at the end of the year.

Certain other data are also of considerable interest. But it may suffice to point out here that of the large number of cases submitted to the probiviral courts for conciliation purposes in 1932, 26,763 related to disputes about holidays, and 37,535 to questions of wages, whereas only 1,426 cases concerned unlawful dismissals, 198 cases referred to family allowances, 590 to bad workmanship, 779 to travelling and moving expenses, and a score of other items in regard to which disputes were numbered by hundreds only. In other words, statistics show abundantly that disputes concerning questions of holidays and wages occupy most of the attention of the conciliation committees of the probiviral courts.

The only available data concerning appeals taken before ordinary courts of law against the decisions rendered by the probiviral courts bear upon appeals to the Supreme Court. Thus in 1932 there were 180 cases taken from the probiviral courts to the Supreme Court. As 65 cases had remained pending from the previous year, it gave a total of 245 appeals, of which 71 were dismissed, 69 were confirmed and a new trial ordered, and 27 were settled by other decisions. In 1933, 172 appeals were lodged and a total of 184 cases were settled.

The number of appeals to the Supreme Court is indeed small in comparison with the number of cases which were settled by judicial decision of the probiviral courts. The explanation for this situation is to be found in the fact that in France legal precedents affecting labour matters have long since gained recognition, and the few appeals which are now lodged each year aim at remedying an excess of power rather than a misinterpretation of a legal right by the probiviral courts.

4. Summary

The only tribunals in existence in France for the judicial settlement of individual labour disputes arising out of a contract of employment between employers and employees or apprentices are the probiviral courts. Their first task is to endeavour to settle this dispute by means of a conciliation agreement and, where this is impossible, by a judgment having the force of law.

Appeals against the decisions of the probiviral courts may be lodged with the civil courts when the amount involved in the dispute exceeds 1,000 francs. There may be a further appeal to the Appeal Courts against the decision of the civil courts provided the sum involved exceeds 7,500 francs.

When the amount at issue does not exceed 1,000 francs an appeal may be lodged directly with the Supreme Court of Appeal on the ground that the probiviral court has exceeded its powers or infringed the law. The Supreme Court of Appeal may also hear appeals against the decisions rendered by the civil courts on appeal from the probiviral courts if it can be alleged that the civil court had no jurisdiction in the case, has exceeded its powers or has transgressed the law.

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GERMANY [1]

1. Introduction

Special tribunals for the settlement of labour disputes have existed in Germany ever since the beginning of the nineteenth century. At first the labour tribunals were set up in a few localities only and even then their scope was not sufficiently determined. Some improvement was felt as a result of a Prussian law passed in 1846 which purported to define more exactly the competence of the Rhineland industrial courts, which dated back to 1810. It was a very useful step, but it did not produce all the results expected. For one thing it did not help in any great measure to increase the activities of the labour tribunals.

[1] In the territory which recently formed the State of Austria the settlement of labour disputes is at present still governed by the former Austrian legislation : see *Legislative Series* 1922, Aus. 1; 1934, Aus. 7; and 1936, Aus. 4.

The number of cases decided by the labour tribunals even diminished for some years after the institution of arbitral tribunals in Prussia in 1869.

In the course of time various proposals were made to modify the constitution of the labour courts, and in 1890 a law was passed providing for the establishment of a rather complete system of industrial courts with jurisdiction in regard to collective as well as individual labour disputes. These industrial courts were composed of a chairman and vice-chairman appointed by the local administrative authorities and of four assessors elected in equal numbers by the respective groups of employers and workers for a period varying from one to six years. Representation of the parties by a relative or friend was tolerated in practice, although not permitted by the Act. Conciliation played a very important part in the proceedings before the labour tribunals. In fact, the courts which rendered binding decisions in individual disputes served merely as conciliation boards in collective disputes, where the one purpose was always to effect a settlement by agreement between the parties. Compulsory execution of the decisions of the tribunals was as yet in its first stages of development. For instance, when there was an equal division of the votes of the assessors in making a decision with regard to an individual dispute which had proved incapable of solution by conciliatory measures, the chairman, who had a casting vote, was entitled to refrain from exercising his right so as not to impose on one of the parties a decision which might suggest too great compulsion. Appeals against the decisions of the labour tribunals could, under certain conditions, be lodged before the ordinary district courts of law.

The main defect of the 1890 Act, however, was that it left to the local authorities the right to decide whether or not an industrial court was to be set up in the locality. To remedy this unsatisfactory situation an amendment was introduced in 1901 making the establishment of industrial courts compulsory in all the communes which had a population of more than 20,000 inhabitants and, at the same time, extending the jurisdiction of those courts to other classes of labour dispute.

In 1904 further legislation was adopted for the purpose of bringing within the competence of the industrial courts labour disputes connected with commercial undertakings. Until then only labour disputes relating to industrial undertakings had come within their competence. As late as 1923 an Order issued by the Federal Minister of Labour regulated the procedure before the industrial and commercial courts. But the most important enactment on the subject of labour jurisdiction was the Labour Courts Act of 23 December 1926 [1] which repealed the earlier Acts and laid the foundation for the system of labour tribunals at present in force.

2. The System in Force

In view of the political events and of the new legislation on labour matters the Federal Minister of Labour and the Federal Minister of Justice were empowered by the National Labour Act of 20 January 1934 [2], which came into force on 1 May of the same year, to promulgate

[1] *L.S.*, 1926, Ger. 8. For a brief survey of the situation just before the passing of that Act, see "The Administration of Labour Law in Germany" by Hugo Siefart. *International Labour Review*, Vol. XV, Nos. 5 and 6, May and June 1927.

[2] *L.S.*, 1934, Ger. 1.

a new text of the Labour Courts Act embodying the amendments made necessary by the recent Acts and Orders relating to labour.

The new text of the Labour Courts Act of 10 April 1934 [1] became operative on 1 May 1934. It abolishes the system of decision procedure introduced by the 1926 Act to govern the proceedings in labour disputes arising under the Works Councils Act of 4 February 1920 [2] since repealed by the National Labour Act of 20 January 1934 [3]. The new text incorporates some of the changes that were introduced in the 1926 Act by a law passed in 1933 [4] which did away with the participation of the respective employers' and workers' industrial organisations in the appointment of assessors for the labour courts, and lays down new regulations governing the activities of the Labour Front in this respect.

The old trade unions and employers' associations were all submerged in one big organisation, the German Labour Front. This put an end to the existence of the bodies forming the basis of the system of conciliation, the main object of which was to assist in the conclusion of collective agreements [5]. The collective agreements which in the past were concluded by the employers' and workers' organisations are now replaced by the collective rules issued by the labour trustees, so that the labour courts can no longer be called upon to deal with disputes which formerly were based on collective agreements and in which industrial associations or works' representatives could appear as parties.

The Labour Trustees Act of 19 May 1933 [6] was only intended as a provisional measure, but it has since been confirmed by the National Labour Act. The labour trustees, who are appointed for large economic areas determined by the Federal authorities, are Federal administrative officials whose task it is to ensure the maintenance of industrial peace. To this end they are given, among other powers, the right to prescribe collective rules applicable to different undertakings and to lay down guiding principles for the establishment rules to be issued by the employer, and of individual contracts of employment to be concluded between employers and employees, who are also called "leaders" and "followers". In the performance of their duties the labour trustees, who are fourteen in number at the present moment, are assisted by permanent advisory boards of experts and in special cases by temporary advisory committees of experts appointed by the trustees.

The principle at the basis of the new social legislation is that the whole working of the establishment must be based on the personal confidence between the leader and his followers for the good of the establishment and of the people and State. In establishments which employ twenty or more persons confidential councillors are appointed from among the followers to advise the leader. The number of councillors varies according to the number of persons employed but cannot

[1] *L.S.*, 1934, Ger. 5.

[2] *L.S.*, 1920, Ger. 1 and 2.

[3] *L.S.*, 1934, Ger. 1.

[4] *L.S.*, 1933, Ger. 3 and 5.

[5] The Orders, dated 30 October and 29 December 1923, respecting conciliation were repealed by the National Labour Act of 1934. They were at the basis of the study in *Conciliation and Arbitration in Industrial Disputes*, pp. 245 *et seq.* See also "The New German National Labour Act" in *International Labour Review*, Vol. XXIX, No. 4, April 1934.

[6] *L.S.*, 1933, Ger. 6, A.

in any case exceed ten. A majority of the confidential council so formed may appeal to the labour trustee against any decision of the leader with respect to conditions of employment which does not appear to be warranted by the social and economic conditions of the establishment.

It is the leader's duty to promote the welfare of his followers who in turn must serve him with loyalty. This loyalty is based on the concept of social honour newly introduced into labour legislation and fostered by the institution of social honour courts [1].

Apart from these courts there are other less important institutions which cope with labour differences. There are, for instance, the guild councils, composed of equal numbers of employers and workers appointed by the guild to settle differences between the members of guilds and their apprentices. The federal administrative authorities, particularly the industrial police authorities, the inspectorate and the Federal Insurance Office must also be mentioned in this connection. Important duties may also be delegated to deputy labour trustees appointed under the National Labour Act by the Federal Minister of Labour, who is responsible for the application by the District of labour legislation enacted by the Reich [2]. A large number of disputes are adjusted by the legal consultation offices which were set up by the Labour Front for the purpose of giving free legal advice to employers as well as to wage-earning and salaried employees, with regard to matters affecting their employment relationships. This, together with the fact that labour relations generally have become more peaceful in Germany in recent years, explains why the number of disputes settled by the labour courts has diminished recently [3]. The labour courts established in virtue of the Labour Courts Act of 10 April 1934 comprise the local labour courts, the District labour courts and the Federal Labour Court. A brief description of these various labour tribunals is given below.

Constitution of the Courts

The local labour courts are established by the Federal Minister of Justice in agreement with the Federal Minister of Labour. They are independent courts whose jurisdiction extends as a rule to the area of an ordinary local court, and in certain cases to larger areas, especially where homogeneous economic conditions prevail. Their jurisdiction may even be extended in particular cases by special provisions contained in collective rules.

The authorities which set up the local labour courts also establish the District labour courts in connection with the ordinary district courts. But the District labour courts may have a seat different from that of the ordinary district courts within the area of the latter's jurisdiction.

[1] The reader will find a description of the composition and working of these social honour courts in *International Survey of Legal Decisions on Labour Matters*, 1934-35, p. XXIV, and in the *I.L.O. Year-Book*, 1933, pp. 317 *et seq.*, 1934-35, pp. 395 *et seq.*, 1935-36, p. 412.

[2] See on this point the note on the competent authorities having jurisdiction in labour matters, in *International Survey of Legal Decisions on Labour Law*, 1936-1937, Germany.

[3] See further the chapter on Results, pp. 109 *et seq.*

The local labour courts and the District labour courts are divided into special chambers, the number of which is fixed by the authorities which establish these courts. In the case of local labour courts there may also be formed separate chambers for disputes involving wage-earners and those involving salaried employees, or trade chambers for disputes involving certain groups of wage-earning and salaried employees. Trade chambers are always constituted for disputes in handicrafts.

The Federal Labour Court is established in connection with the Federal Court and has the same seat. The constituting authorities are the Federal Minister of Justice and the Federal Minister of Labour, who are entrusted with other important duties in connection with the Federal Labour Court.

A Senate corresponding to the chambers in the local labour courts and District labour courts is formed within the Federal Labour Court by the Federal Minister of Justice in agreement with the Federal Minister of Labour.

The Act lays down the quorum required so as to give validity to the decisions of the various chambers and the Senate.

Composition of the Courts

The local labour courts. — The labour courts are composed of the requisite number of chairmen, vice-chairmen and assessors. In the case of the local labour courts the chairmen and vice-chairmen are appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour. The chairmen and vice-chairmen are, as a rule, professional judges. Other persons may not be appointed unless their economic position is such that they cannot be regarded either as employers or employees and are in other respects qualified to hold judicial office.

These conditions seem reasonable enough when it is realised that the chairmen and vice-chairmen have the rights and duties of State judicial officers. They may be appointed for a term of office varying from one to nine years. After having discharged the duties of chairman as his principal office for not less than three years, a chairman may be appointed for life. In that case the statutory age-limits at which judges retire also apply to him. A chairman is entitled to remuneration, but it belongs to the State Governments to decide whether or not remuneration is to be paid to a vice-chairman or to a chairman who holds that office in a subsidiary capacity.

The assessors are appointed half from among employers and half from among employees by the Minister of Labour in agreement with the president of the ordinary District court. They are appointed for a term of three years and selected in suitable proportions from nomination lists sent in by the German Labour Front and by certain public bodies mentioned in subsection 2 of section 22 of the Act[1]. In drawing up nomination lists the German Labour Front must include an equal number of owners of undertakings and employed persons, and in so far as a corporate organisation of separate branches of industry has been established in virtue of Federal laws, the nominations must be made in agreement with the special industrial organisations. For

[1] See also the Order dated 5 December 1935 (*Reichsarbeitsblatt*, I, p. 1428) and the General Instruction issued by the Minister of Justice on 16 December 1935 (*Deutsche Justiz*, Year 97, No. 50, p. 1798).

the appointment of assessors, business managers and works managers, provided that they fulfil certain requirements, are placed on the same footing as owners of undertakings.

The assessors may be either men or women who have attained the age of twenty-five years. They must be German nationals and have been occupied for at least one year as employer or employee within the district of the labour court.

The Act provides that a person may be appointed employers' assessor even though he does not continually employ people or when he is only the statutory representative of a private corporation or association or a member of the supervisory council, or if he is a public official. On the other hand an unemployed person may be appointed as employees' assessor.

In each court with more than one chamber there is a committee of assessors, consisting of an equal number of employers' and employees' assessors, which is heard before the formation of chambers, the allocation of assessors to the chambers, and the allocation of business, as well as the drawing up by the chairman of rosters for the summoning of assessors to the sessions.

Assessors are not entitled to remuneration for their services, but they receive compensation for the loss of earnings and the expenses occasioned by the discharge of their duties. The Act specifies the conditions under which an assessor may refuse to accept office, or be subjected to disciplinary measures or removed from office.

The District labour courts. — The chairmen and vice-chairmen of the District labour courts are appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour from among directors and permanent members of the ordinary district court, and if there is an Upper District court at the seat of the District labour court, a councillor of the Upper District court may also be appointed. Moreover the business of the District labour court is allocated by the president of the ordinary district court with the assistance of one or two chairmen of the District labour court.

In other respects the rules laid down in the Act for the composition of the local labour courts apply, *mutatis mutandis*, to the composition of the District labour courts.

The Federal Labour Court. — The chairmen of the Federal Labour Court are appointed[1] from among chairmen of commission of the Federal Court and the vice-chairmen from among chairmen of Senates or councillors of the Federal Court. As in the case of chairmen and vice-chairmen of the inferior courts, the persons appointed to these offices in the Federal Labour Court must as a rule be judges having special knowledge and experience in the field of labour legislation and social questions. This qualification also applies to the judicial assessors, who are selected from among councillors of the Federal Court.

The non-judicial assessors are appointed for three years at a time by the Federal Minister of Labour in agreement with the Federal Minister of Justice. They are selected in suitable proportions from lists drawn up in the same manner as for the appointment of assessors to the local and District labour courts. They too must have been occupied as

[1] The Act does not say by what authority the appointment is made, but here again the appointing authorities may be taken to be the Federal Minister of Justice and the Federal Minister of Labour.

employer or employee for a considerable time within the German Federation. Except for the fact that they may at any time be removed from office by the president of the Federal Court, their position is otherwise similar to that of assessors in the ordinary labour courts.

Competence of the Courts

The Labour Courts Act lays down in section 2 that the labour courts, whatever the amount involved, have exclusive competence in the following cases :

" 1. In civil actions between owners of undertakings (employers) and employed persons (employees) arising out of employment or apprenticeships, as to the existence or absence of a contract of employment or articles of apprenticeship, out of the negotiations for the conclusion of a contract of employment or articles of apprenticeship and out of the effects thereof, and in civil actions arising out of unlawful acts where these are connected with the employment or apprenticeship, with the exception of actions respecting an invention by an employed person, provided that the question is not merely one of claims to the remuneration or compensation for the invention, and actions involving persons belonging to a ship's crew under section 481 of the Commercial Code ;

" 2. In civil actions between employed persons arising out of their common employment and out of unlawful acts, provided that these are connected with the employment or apprenticeship. "

Section 3 of the Act extends the competence of the local labour courts to complaints not coming under section 2 against owners of undertakings or employed persons or to complaints made by them against third parties whenever there is a legal or direct economic connection between the claim and a civil action of the nature specified in section 2 which is pending or simultaneously becomes pending in the local labour court and there is no court solely competent to deal with the claim. Civil actions between private corporations and their statutory representatives may also be brought before the labour courts if an agreement to that effect has been concluded.

The provisions of the Code of Civil Procedure enabling the ordinary courts to decide their competence *ex officio* also apply to the labour courts, and the latter may declare that they have no jurisdiction in a particular case unless the labour trustee has laid down in collective rules that a labour court which of itself has no jurisdiction in the locality is competent in the matter.

The jurisdiction of the labour courts may, however, be excluded in civil actions arising out of an employment or apprenticeship relation governed by collective rules whenever the collective rules issued by the labour trustees provide for the settlement of such disputes by an arbitration tribunal. It may also be excluded by an arbitration agreement between the parties under the conditions set forth in the Act (sections 91-100) and provided that the employed person concerned earns a salary of over 7,200 Reichsmarks per year. If the agreement in the particular case does not otherwise stipulate, the arbitration court must be composed of an equal number of employers and employees. The award, which may be issued by a simple majority of the members of the arbitration court, must be filed with the labour court which would have been competent to deal with the claim and thereupon

acquires the same force between the parties as an enforceable judgment of the labour court.

In the cases specified above where arbitration could be resorted to, an agreement could also be concluded between the parties to refer the matter to a conciliation board constituted in accordance with the terms of the agreement (sections 101-105), or to submit important questions of fact to the decision of a board of experts set up in the manner agreed upon (sections 105-107). But in neither of these two cases would the jurisdiction of the labour court be excluded, save to this extent, that on the question of fact the court would be bound by the findings of the experts.

The District labour courts are competent to hear appeals from the local labour courts and the Federal Labour Court may hear appeals from either the District labour courts or the local labour courts. The rules which govern appeals will be discussed later, along with other rules of procedure.

The Parties

Apart from the above-quoted sections relating to the competence of the labour courts, which incidentally determine what parties may appear in suits before these courts, there is given in section 5 a definition of the term " employed person " (employees) which, for the purpose of the Act, includes wage-earning and salaried employees and apprentices. It provides moreover that persons who are not bound by a contract of employment but are in a position of economic dependence and perform work at the order of certain other persons and on their account, for instance, persons engaged in the home industry, are placed on the same footing as wage-earning or salaried employees. But statutory representatives of corporations, public and private associations, public officials and members of the Federal Army or Navy, are not deemed to be employees within the purview of the Act.

Representation of the Parties

The representation of the parties before the different labour courts is not uniform. Advocates and persons who plead professionally in the courts of law are not admitted as attorneys-at-law or counsel to represent the parties before the local labour courts unless they have received special authorisation from the German Labour Front in each case. But managers and salaried employees of the legal consultation offices set up by the German Labour Front to give legal advice to the employers and the employees are admitted as representatives provided they do not otherwise plead professionally in the ordinary courts of law. The legal consultation offices may only represent persons belonging to the Labour Front or to trade organisations affiliated to it. In the cases in which these legal consultation offices cannot represent a party, or if for good reasons — for example, when they consider that the party instituting proceedings is bound to fail — they refuse to represent such a party, then the chairman of the labour court may, according to circumstances, authorise an advocate or any other suitable person to represent the party. But persons who defend the interests of third parties are not allowed to assist or represent the litigants before the labour courts.

Other organisations may be placed in the same category as the legal consultation offices as regards the representation of their members before the courts.

In the District labour courts and in the Federal Labour Court the parties are represented by attorneys-at-law who must be advocates called to the German bar.

An action may be continued by a legal successor or by a person who is empowered by law to do so in place of the original party.

Procedure

Local labour courts. — The proceedings in the labour courts are governed to a very wide extent by the provisions of the Code of Civil Procedure concerning the procedure in the ordinary local courts. The local labour courts are competent as courts of first instance in the system established under the Labour Courts Act.

The main points in regard to which the procedure does not follow the rules laid down in the Code of Civil Procedure may be summarised as follows.

Preliminary Proceedings

The complaint, which must ordinarily be made in writing or orally, to be recorded at the office of the court, is not deemed to be lodged until it is communicated to the defendant. But it may be lodged orally on the regular court days when the parties may, without summons, appear before the court for the trial of the action. In such cases the complaint is only recorded if the case remains unsettled.

Unless conciliation procedure before another body (sections 101-105) has been agreed upon, the oral proceedings begin as proceedings before the chairman with a view to reaching an amicable agreement between the parties. To this end the chairman discusses freely with the parties the matter in dispute and takes such steps as are possible at that stage to elucidate the facts of the case. But he must not examine the witnesses on oath or obtain evidence on oath from the parties. If the parties then and there agree to submit the dispute to conciliation procedure the chairman fixes the date for the hearing.

For reasons of expediency conciliation proceedings may be conducted in private, but otherwise they are public.

When one of the parties fails to appear for the conciliation proceedings or when the conciliation proceedings are not successful, the chairman decides alone whether the judgment can be given without a hearing either by default or on account of the acknowledgment or withdrawal of the claim or the abandonment of the case by one of the parties. When both parties fail to appear for the conciliation proceedings the chairman fixes the date for the trial of the action. It is his duty to prepare for the trial so that it will, if possible, be completed in a single hearing. For this purpose he may, *inter alia*, have summonses issued to witnesses and experts, obtain official statements, secure documentary evidence and issue summonses to the parties.

The Trial

The chairman can direct the parties to appear in person at any stage of the proceedings and refuse to admit a representative if a party has absented himself without cause in defiance of the order.

The chamber of the court gives a ruling with regard to the challenge of members of the court and if the chamber has not a quorum owing to the exclusion of the challenged member or members, the District labour court gives the decision.

Where evidence can be taken at the seat of the labour court, it is taken before the chamber. If it cannot be taken at the seat of the court but within its district, the chairman may take the evidence, and if it must be taken outside the district then the task is entrusted to the chairman of the labour court in the district where the evidence is to be collected. Witnesses and experts are not sworn unless the chamber deems it necessary.

The proceedings before the court, including the taking of evidence and the announcement of decisions, are public unless the court decides that publicity would endanger public order, particularly the safety of the State, or public morals. The proceedings are conducted in private at the request of either party if it is alleged that secrets of an undertaking, business or invention may thereby be revealed.

The Judgment

The judgment is generally delivered at the hearing. When circumstances necessitate a delay, a date of not more than three days later must be fixed for the delivery. Unless both parties are absent, the grounds for the decision are stated when the judgment is delivered. In any case a copy of the judgment is communicated to the parties.

The absence of the assessors does not render the delivery of the judgment invalid. It is enough for the clause which makes the judgment enforceable to be previously signed by the chairman and the assessors. The judgment itself containing a statement of the facts and the grounds for the decision need only be signed by the chairman. It must also assess the costs, which cannot include compensation for the loss of time or the expenses which the successful party may have incurred.

The party against whom judgment is rendered by default may lodge a protest against it within three days after it has received communication thereof. The protest must be made in writing or by means of a declaration to be recorded at the office of the court.

The Execution

In order to secure the greatest possible expediency in the settlement of disputes which come before the labour courts, the judgments against which a protest or an appeal is admissible are made provisionally enforceable. If the defendant can show that execution would cause him irreparable prejudice, the court at his request may prohibit in the judgment itself the provisional execution of it.

The Act contains special provisions with regard to cases of wrongful dismissal dealt with in sections 56 *et seq.* of the National Labour Act [1]. The object is to make the judgment allowing an application for revocation of a dismissal actually enforceable only from the time when the person dismissed shows that the owner of the undertaking has refused to revoke the dismissal, or has failed to notify him within a certain time-limit whether he elects to revoke the dismissal or to pay compensation. In such cases proof may be given by affirmation simply.

Appeals

An appeal against a decision of a local labour court may be taken to the District labour court and thence to the Federal Labour Court. In certain cases indicated below the appeal may be taken directly from a local labour court to the Federal Labour Court.

[1] *L.S.*, 1934, Ger. 1.

Under section 78 of the Act, the provisions of the Code of Civil Procedure governing appeals on a question of procedure against decisions of the district courts of law apply, *mutatis mutandis*, to similar appeals against decisions of the local labour courts or the chairmen of them. The District labour court decides whether or not such appeals are admissible. Furthermore, section 79 lays down that the provisions of the Code of Civil Procedure concerning the reopening of proceedings apply, *mutatis mutandis*, to actions before the labour courts, and that a plea of nullity cannot be based on defects in the procedure for the appointment of assessors or on circumstances which preclude their appointment.

Appeals to the District labour courts. — An appeal on either a question of law or a question of fact may be lodged with the District labour court against the judgment of a local labour court when the procedure of appeal under section 78 is not available, provided that the sum involved as assessed by the court of first instance is more than 300 Reichsmarks or that leave to appeal was granted on the ground of the very great importance of the action.

The proceedings before the District labour court follow to a large extent the rules laid down in the Code of Civil Procedure governing the procedure before the ordinary district courts. The provisions of the Act governing the preliminary proceedings, the trial, the judgment and its execution, are the same for the District labour courts and for the local labour courts.

The rules which are special to District labour courts may be briefly stated as follows. The time-limits for lodging an appeal or for stating the grounds thereof are in either case a fortnight. New facts and evidence must also be produced by either party within certain time-limits, otherwise they are not admitted, unless the District labour court is satisfied that the delay was not due to the fault of the party. A case cannot be referred back to the court of first instance on the ground of a defect of procedure in that court.

To avoid delays in the proceedings the Act does not allow any appeal against the administrative orders or decisions of the District labour court or of its chairman except where the appeal is dismissed. An interim judgment of a local labour court as to the grounds for the claim is not deemed to be a final judgment for purposes of appeal. In dismissal cases the execution of the judgment rendered on appeal is subject to the same rules as apply in the local labour courts. It is of course obvious that there can be no appeal to the District labour court in a case which has already been made the subject of a direct appeal to the Federal Labour Court.

Appeals to the Federal Labour Court. — An appeal on a point of law may be made to the Federal Labour Court for the revision of a judgment of a District labour court if the amount involved is above 6,000 Reichsmarks or if the District labour court has authorised such an appeal on the ground that the action is of fundamental importance. But there can be no appeal if the judgment concerns the revocation of a dismissal or involves the ordering, alteration or remission of an attachment or of a provisional order.

An appeal against the judgment of a local labour court may be lodged directly with the Federal Labour Court if the amount involved is above 6,000 Reichsmarks and the other party consents, or the Federal Minister of Labour declares that an immediate decision by the Federal Labour Court is necessary in the interest of the community, and

provided also that an appeal to a District labour court has not previously been made.

Here again the provisions of the Code of Civil Procedure governing the proceedings for the revision of judgments in civil cases apply, *mutatis mutandis*, to the revision of judgments of either the local labour courts or the District labour courts. And the rules of procedure laid down in the Labour Courts Act relating to the challenge of members, the powers of the chairmen and assessors and the judgments of local labour courts apply also in the Federal Labour Court. The Act further provides time-limits of a fortnight either for lodging the application or for stating the grounds for revision. It does not allow revision to be based on the grounds that the judgment of a District labour court is itself based on the non-application or incorrect application of a legal provision or a clause of collective rules affecting the terms of individual contracts of employment. Nor can revision be based on the improper assumption of territorial jurisdiction, defects in the procedure for the appointment of assessors or circumstances which preclude their appointment.

The Act finally confers upon the Federal Labour Court the necessary competence to decide on special appeals under the relevant provisions of the Code of Civil Procedure.

3. Results

As the judicial labour system at present in force in Germany is based on the Labour Courts Act of 23 December 1926, it will be of interest to give some statistics to show the developments which have taken place since 1 July 1927, which is the date when that law came into effect. The figures reproduced in tables I and II below are taken from the official statistics published for the respective years in the *Vierteljahrshefte zur Statistik des Deutschen Reichs*. Table I contains statistics on the activity of the labour courts of first instance, while table II relates to the District labour courts and the Federal Labour Court.

It will be observed that in 1930 the number of labour courts of first instance and of District labour courts was reduced considerably. This is due to reorganisation measures which were taken in Bavaria. But the number of disputes handled by the courts during that year was none the less greater than that of the preceding years. It was greater still in 1931 when the largest number of labour disputes in the history of the new judicial labour system, that is 441,243 cases, was dealt with by the courts. But from then on the number of labour disputes has diminished continually. By 1935 it had dwindled to 188,908 cases.

Of the various disputes which statistics show to have been brought before the courts either by wage-earning or salaried employees and handicraftsmen, a very large proportion were settled by conciliation. For instance in 1935, 62,278 cases were adjusted by amicable arrangement, whereas less than half that number, that is 26,505 cases only, necessitated a settlement by trial and judgment. The tables also indicate the number of disputes which remained unsettled at the end of each year. The balance of the disputes which are not accounted for were settled either by special decisions based on the acknowledgment, withdrawal or abandonment of the claims or by other measures. For greater details in this respect, the reader must be referred to the sources of the information upon which this monograph is based.

With regard to appeals dealt with by the District labour courts, however, it will be observed that more cases reached settlement by trial and judgment than by conciliation. But this situation scarcely requires any explanation, for disputes which fail to meet with an amicable settlement in one court are less apt to be settled by conciliation in a higher court. Separate figures are also given with regard to appeals against final judgments and appeals against preliminary rulings of a lower court or of its chairman. But appeals of the latter kind, which usually concern matters of procedural law, are much less frequent, as may be seen from the statistics given in table II, upon appeals against final decisions.

TABLE I. — LABOUR INDIVIDUAL DISPUTES

Year	Number of labour courts of first instance	Pending and lodged during the year	Lodged by			Settled by		Unsettled
			Employees		Handicrafts-men	Conciliation	Trial and judgment	
			Wage-earning	Salaried				
1927 [1]	527	164,618 [2]	107,953	39,645	17,020	55,801	23,908	28,354
1928	527	379,689	252,833	89,796	37,060	137,280	62,301	37,886
1929	527	427,604	277,640	109,880	40,084	145,693	69,181	39,239
1930	462	438,449	277,022	123,552	37,875	143,861	75,122	39,009
1931	452	441,243	268,262	138,648	34,333	134,399	75,190	42,682
1932	452	371,592	225,247	120,177	26,168	114,878	64,081	35,360
1933	452	261,530	150,864	91,049	19,617	88,921	40,185	18,875
1934	451	200,052	115,616	64,895	19,541	72,788	28,629	15,338
1935	454	188,908	105,645	64,371	18,892	62,278	26,505	17,242
1936	454	174,476	103,330	53,709	17,437	59,964	24,854	17,187

[1] From 1 July 1927, date of the coming into force of the Labour Courts Act of 23 December 1926.

[2] 7,991 cases pending from industrial and commercial courts now abolished.

TABLE II. — APPEALS

Year	District Labour Court							Federal Labour Court			
	Number of courts	Appeals pending and lodged during the year against judgments	Settled by		Unsettled	Appeals pending and lodged during the year against rulings	Unsettled	Appeals against judgments		Appeals against rulings	
			Conciliation	Trial and judgment				Cases pending and lodged during the year	Cases unsettled	Cases pending and lodged during the year	Cases unsettled
1927	80	4,064 [1]	—	1,378	1,349	—	—	123 [1]	87	11	—
1928	80	13,497	—	6,097	2,213	—	—	762	369	38	1
1929	80	16,738	—	7,289	2,984	—	—	959	239	72	4
1930	64	20,042	3,654	8,775	3,211	—	—	953	340	118	3
1931	60	20,633	3,841	8,874	2,943	—	—	982	295	119	5
1932	60	17,220	3,406	7,233	2,161	—	—	831	151	151	10
1933	58	10,774	2,399	4,166	1,323	—	—	479	83	113	1
1934	58	7,373	1,344	3,120	995	1,002	58	350	91	69	2
1935	59	7,105	1,171	3,211	1,226	1,142	62	407	92	64	—
1936	59	7,015	1,123	3,274	1,073	1,171	72	397	119	74	2

[1] Lodged during the second half of 1927.

4. Summary

The judicial machinery for the settlement of labour disputes now in existence in Germany appears a trifle complicated when the numerous details of procedure are examined. But as a judicial system it is relatively simple. It consists of a hierarchy of labour courts comprising local courts, District courts and a Federal court. The local labour courts serve as courts of first instance for the various districts. The District labour courts are competent to hear appeals from the different local courts within the district. In the last resort an appeal against the decision of any local court or District court may be taken to the Federal Labour Court.

All these labour courts are composed of a requisite number of chairmen and vice-chairmen, who must as a rule be judges having special knowledge and experience of labour questions, and of assessors chosen from among employers and employees. Their task is to settle labour disputes arising out of the conclusion or interpretation of individual contracts of employment or articles of apprenticeship and to deal with civil actions based on tortious acts connected with the employment or apprenticeship.

The proceedings before the labour courts are governed by the rules of procedure laid down in the Labour Courts Act, and when those rules are either insufficient or inapplicable the provisions of the Code of Civil Procedure apply.

The jurisdiction of the labour courts may under certain conditions be excluded by arbitration, in accordance with the provisions of the collective rules or of an arbitration agreement between the parties, in which case the award of the arbitral tribunal is given the same force as a judgment of a labour court.

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ITALY

1. INTRODUCTION

In Italy, as well as in other countries where special tribunals have been instituted for the purpose of adjusting individual labour disputes, one of the objects in the mind of the legislator, particularly in the early days, was that such disputes should be submitted to the expert judgment of representatives of the parties concerned. The idea had already been carried out at the end of the year 1878 in the district of Como. There probiviral councils composed of equal numbers of employers and workers discharged the dual functions of a conciliation board and of a judicial tribunal for the settlement of labour disputes which arose in the silk industry[1]. The results obtained under the system in force in that particular locality were both criticised and praised. Very soon numerous proposals were made before the legislative assembly with a view to the setting up of special labour tribunals in other parts of the country.

[1] Cf. LESSONA : *Codice dei Probiviri*, p. 6.

The first national law enacted on the subject was the Probiviral Courts Act which was passed on 15 June 1893. It provided for the establishment of probiviral councils composed of not less than ten and not more than twenty members chosen in equal numbers from among employers and workers. The probiviral councils were set up by Royal Decree on the proposal of the Ministers of Justice, and of Agriculture, Trade and Commerce, and after consultation of the different trade organisations. A chairman and a vice-chairman were appointed by Royal Decree on the proposal of the Minister of Agriculture, Trade and Commerce. Each probiviral council comprised a conciliation board and a probiviral court. The conciliation board was composed of one employer and one worker and of the chairman of the council. In the latter's absence the chair was taken by the vice-chairman of the council. The probiviral court was composed of the same chairman or vice-chairman and of four other members, two representing the employers and two the workers.

The jurisdiction of the probiviral councils covered all disputes which arose out of a contract of employment or apprenticeship between an industrial employer and his employees, provided the amount involved in the dispute did not exceed the sum of 200 lire[1]. The decisions of the probiviral courts were final except where the court had no jurisdiction or had exceeded its powers. In the latter case an appeal could be lodged before the magistrate in the locality or the court of first instance depending on the amount involved in the dispute, and from there could be taken to the Supreme Court. The probiviral court could also discharge the functions of an arbitration board for disputes where the amount of the claim was more than 200 lire.

For the competence of the probiviral courts in the case of collective labour disputes, the reader may be referred to the International Labour Office's study of conciliation and arbitration in Italy[2].

The main defect of the judicial labour system established in virtue of the Probiviral Courts Act was that it did not make compulsory the institution of labour courts in all centres of industrial importance. Moreover, the jurisdiction of the courts did not extend to claims for more than 200 lire or to certain classes of employees, such as those employed in transport, maritime or agricultural undertakings, or to commercial employees.

The Decree of 1 May 1916[3] respecting the employees of private undertakings called up for military service provided for the setting up of Arbitration Commissions whenever necessary to settle all disputes relating to those employees. These commissions were composed of five members appointed by the President of the Court of the district where the commission was to sit. The chairman of the commission was chosen from among the judges of the Court. The other members, two ordinary members and two substitutes, were selected in equal numbers from among the owners of commercial or industrial establishments and from among the employees of private undertakings. Appeals against the decisions of these commissions could be lodged before a Central Commission set up in Rome and composed in the

[1] This figure was subsequently raised to 1,000 lire by an Act of 20 March 1921.

[2] *Conciliation and Arbitration in Industrial Disputes*, p. 424.

[3] *Bulletin of the International Labour Office* (Basle), Vol. XI, p. 176.

same manner as the various commissions, with this difference that the chairman of the Central Commission had to be appointed from among the members of the Supreme Court of Appeal.

The foregoing provisions were not repealed by the Legislative Decree of 9 February 1919[1] relating to the compensation to be paid to salaried employees in case of the termination of contracts of employment concluded for an indefinite period of time, which provided that, pending the issue of an Act establishing probiviral councils and dealing with contracts of employment, Joint Commissions composed of equal numbers of representatives of employers and employees were to be established in every chamber of commerce.

One of the first legislative decrees issued after the advent of fascism in Italy and dealing with individual labour disputes was the Decree dated 2 December 1923[2] relating to the settlement of disputes based on the contracts of employment of salaried employees. It abolished the Arbitration Commissions established in virtue of the Legislative Decree of 1 May 1916 and the Joint Commissions set up under the Legislative Decree of 9 February 1919 which have been referred to above, and replaced them by a system of Arbitration Boards. These were instituted in the chief town of each province and were composed of a chairman and eight members, four of whom (two principal and two substitute members) were selected from among the persons engaged in industry and commerce and four from among the salaried employees in private undertakings. These provincial boards were competent to deal with individual disputes affecting the rights of salaried employees based on contracts of employment concluded either for a definite or for an indefinite period of time, provided the amount involved did not exceed the sum of 20,000 lire.

Appeals against the decisions of these arbitration boards could be lodged before a Central Board which had its seat in Rome. It was composed of a councillor of the Supreme Court or of an officer of the judiciary of equal rank who acted as chairman, and of twelve members chosen in equal numbers from among officers of the judiciary of lower rank than the chairman or from among other persons having had sound legal training, from among persons engaged in industry and commerce and from among their employees. In this case also half the members were only substitutes.

That system of arbitration boards continued in existence for some years alongside the probiviral courts. Both remained unaffected by the Trade Associations Act of 3 April 1926[3] which provided mainly for the settlement of collective labour disputes by special labour sections of the courts of appeal composed of three judges and two assessors, one representing the employers and one the workers. But it was also stipulated that appeals against the decisions of the probiviral courts and arbitration boards and other bodies having jurisdiction with respect to individual contracts of employment would henceforth lie with the labour sections of the appeal courts.[4]

[1] *L.S.*, 1919, It. 3.

[2] *L.S.* 1924, It. 4.

[3] *L.S.*, 1926, It. 2.

[4] In Italy these special sections are called *Magistrature del Lavoro*, often translated simply by " Labour Courts ".

Two years later a great innovation was brought about when the Royal Decree dated 26 February 1928 [1] laid down new regulations for the settlement of individual disputes arising out of employment. It abolished the probiviral courts which had been in existence since the passing of the Probiviral Courts Act on 15 June 1893 and the Arbitration Boards set up under the more recent Legislative Decree of 2 December 1923. Individual disputes which in the past had fallen within the competence of the probiviral courts and the Arbitration Boards, and those which arose out of employment relations governed by collective agreements were henceforth to be settled by the magistrates or by the courts of first instance, according to the amount involved in the dispute.

The 1928 Decree did not necessarily imply a departure from what had previously been the position in Italy as regards the inclusion among the members of the special labour tribunals of an equal number of representatives of employers and of employees. The Decree provided that the magistrates and the courts of first instance were to be assisted by two citizens, one representing the employers and one the employees, who would have to be experts in labour problems. But these experts were not entrusted with regular judicial functions, and their appointment was not compulsory save at the request of, and upon their nomination by, the parties to the dispute. The Decree also contained detailed provisions concerning questions of competence and of procedure in regard to ordinary actions and to appeals. A report [2] recently published by the Italian Government shows that satisfactory results were obtained in the course of the six years during which the 1928 Decree remained in force. Minor defects however came to light as a result of the experience acquired and in 1934 certain amendments were made.

The System in Force

The settlement of individual labour disputes is now governed by the Individual Disputes Act of 22 January 1934, as amended by the Royal Decree of 21 May 1934 [3], which contains detailed regulations with respect to the functioning of the labour judiciary. In substance this Decree embodies the provisions of the 1928 Decree, together with a few additional rules relating to matters of procedure and certain provisions extending the competence of the labour judicial authorities to disputes arising out of the employment relations between individuals and public bodies, and to disputes arising out of share tenancy relations governed by collective contracts. It is interesting to note that the latter type of relationship, although in essence a relation of partnership, is here brought within the sphere of employment relationships. This step had already been anticipated by the courts, which decided that the relationship of share tenancy could be governed by collective agreements of employment even before the enactment of a specific law to that effect. [4]

[1] *L.S.*, 1928, It. 1-A.

[2] Cf. *International Labour Review*, Vol. XXX. No. 4, October 1934, pp. 509 *et seq.*

[3] *L.S.*, 1934, It. 2.

[4] On this point see *International Survey of Legal Decisions on Labour Law*, 1932, Italy, No. 13.

Another change of considerable significance is that while the 1928 Decree left the legally recognised association for the category to which the complainant belongs free to offer its services for the amicable settlement of the dispute, under the 1934 Decree such conciliation procedure is compulsory. This special feature of the Italian system is dealt with below together with other questions of procedure.

Constitution and Composition of the Courts. — There are strictly speaking no separate labour courts in Italy for the settlement of individual labour disputes. The ordinary judicial authorities deal with such disputes, but are composed in a different manner. The magistrate and the tribunal of first instance are assisted in labour cases by two assessors who are experts in labour problems. One of these experts is a representative of the employers and the other belongs to the working class. Both are selected from among persons mentioned on lists drawn up by the labour and social welfare section of the provincial economic councils of the corporative system on the recommendation of the various legally recognised trade associations.

In so far as it is possible the assessors are appointed from among persons connected with the same category of undertaking as that to which the parties to the dispute belong. Similarly, when the lists are drawn up, due regard must be had to the various kinds of undertakings in the district and employers must be equal to the number of persons chosen from among employees. The persons selected must be Italian citizens, have attained the age of twenty-five years and have resided for at least three years within the jurisdiction of the magistrate's court or the law court. They may be disqualified on various grounds, for instance, if within the two preceding years they have incurred disciplinary penalties imposed by the trade association to which they belong, or if they occupy a position of management therein, if they are bankrupt or if their moral and political conduct is proved unsatisfactory.

A remuneration is granted to assessors who take part in a case, and their travelling expenses are reimbursed to them by the State. But if they fail to attend at a hearing to which they were duly summoned they are liable to a fine not exceeding 500 lire imposed by order of the magistrate or the president of the court and against this no appeal is allowed.

A noteworthy feature of the system is that the magistrate or the law court may decide a case without the help of assessors if it is found impossible to appoint fully qualified persons, if the dispute is of a special character, or if the parties waive their right in that respect or, again, if the persons appointed as assessors fail to attend. But a new rule contained in the 1934 Decree requires the labour sections of the appeal courts[1] to be completed by the addition of two more judges whenever assessors for one reason or another are not present to lend their assistance.

Competence of the Courts. — A concise and yet complete account of the competence of the labour courts under the Royal Decree of 21 May 1934 can best be given by quoting the first two sections of that Act, which read as follows:

"1. The following disputes shall be settled by the magistrates *(pretori)* or by the law courts *(tribunali)* within the limits of their respective jurisdiction with regard to the sum involved in accordance with the regulations laid down by this Decree:

[1] See, below, the section on Appeals, p. 121.

"1. Individual disputes arising out of employment relations which are or may be governed by collective agreements or other rules having the force or effect of collective agreements under the provisions of Act No. 563 of 3 April 1926[1] and of Royal Decree No. 1130 of 1 July 1926[2];

"2. Disputes relating to share tenancy which is governed by collective agreements;

"3. Disputes respecting the civil liability of employers and employees with respect to the trade associations under the fifth paragraph of section 10 of Act No. 563 of 3 April 1936[3];

"4. Disputes arising out of the employment relations of persons employed by public bodies of any kind.

"The provisions of the laws in force shall continue to apply to disputes arising out of the employment relations of persons employed by a public body of any kind[4].

"2. The general regulations respecting competence and procedure in case of bankruptcy shall continue to apply even in the case of the disputes specified in the preceding section.

"The jurisdiction of harbour authorities under the provisions of the Mercantile Marine Code and the measures amending it together with the jurisdiction set up by Legislative Decree No. 232 of 1 February 1925[5] converted into an Act by Act No. 597 of 21 March 1926[6] respecting the institution of dock labour offices and by Legislative Decree No. 2285 of 28 December 1934[7] converted into an Act by Act No. 2637 of 22 December 1927[8] shall remain unaffected.

"Further, the provisions of Act No. 547 of 24 December 1896 respecting the giving of notice on the expiration of a lease shall remain unaffected even when the notice relates to a share tenancy contract covered by subsection 2 of section 1."

In the application of this legislation border-line cases are bound to arise which will bring out doubtful points in its interpretation. But for the purpose of a general outline it may be considered clear enough not to require any special comments here.

[1] Act respecting the legal regulation of collective relations in connection with employment. *L.S.*, 1926 (It. 2); amendment 1930 (It. 5).

[2] Royal Decree issuing rules for the administration of Act No. 563 of 3 April 1926. *L.S.*, 1926 (It. 5); amendment 1931 (It. 1).

[3] The section 10 referred to stipulates that: "Employers and workers who fail to observe the collective contracts and general rules to which they are subject shall be liable at civil law for such failure both to the association of employers and to the association of workers which concluded the contract."

[4] Cf. *International Survey of Legal Decisions on Labour Law*, 1934-1935, Italy, No. 28.

[5] Legislative Decree respecting the institution of dock labour offices. *L.S.*, 1925 (It. 1).

[6] *Gazzetta Ufficiale*, 20 April 1926, No. 92, p. 1672.

[7] Decree to amend Act No. 50 of 12 February 1903 establishing an autonomous harbour authority for the port of Genoa (section I, II, Regulation of labour). (*Gazzetta Ufficiale*, 31 January 1925, No. 25, p. 420.)

[8] *Gazzetta Ufficiale*, 23 January 1928, No. 18, p. 308.

It must be added, however, that the respective competence of the courts entrusted with the settlement of individual labour disputes, and of the labour sections of the appeal courts set up for the adjustment of collective labour disputes, has become more defined as a result of the decisions rendered by the courts themselves, which decreed that there could be no collective dispute unless the interests of the legally constituted trade associations were involved. This amounts to saying that these associations must be parties to the dispute for the dispute to be considered as a collective dispute outside the jurisdiction of the labour courts contemplated in this study [1].

Thus a dispute must be considered as individual where the action is brought for the purpose of obtaining recognition of individual proprietary rights which, while based on the application of a collective agreement, are not to be identified with the interests of a category of employers or workers whose protection belongs directly and exclusively to trade associations [2]. For the same reasons it was held that a dispute between an employer and the workers of his undertaking is not a collective dispute although it relates to the application of a collective agreement and concerns the whole category of employers and workers in a branch of production [3].

The doctrine to be inferred from another analogous decision has been summarised as follows :

" A dispute which, although arising from relations connected with employment regulated by collective agreements, has not for its specific object the regulation of collective relations connected with employment and does not affect the common interests of persons belonging to each of the opposing vocational categories, cannot be regarded as a collective dispute [4]. "

In the different cases to which reference has been made the competence of the courts entrusted with the settlement of individual labour disputes was admitted.

Stress must be laid on the fact that the jurisdiction of the courts does not exclude adjustment of disputes by arbitration. The Act specifies that the disputes referred to in section 1 may be submitted by the parties to arbitration in accordance with sections 8 *et seq.* of the Code of Civil Procedure. But no effect will be given to clauses in collective agreements and in rules having the force thereof by which it is provided that individual disputes arising out of the application of the collective agreement shall be decided by arbitrators or arbitration boards appointed by the contracting associations, or that such disputes shall in any way be withdrawn from the competence of the courts. To all intents and purposes a provision of this sort would be null and void.

As a rule actions are brought before the magistrate or the court of law of the district in which is situated the business or dependency thereof to which the employee belongs or where he has been employed.

[1] The jurisdiction of the labour sections of the appeal courts with regard to collective disputes has already been dealt with in *Conciliation and Arbitration in Industrial Disputes*, pp. 439 *et seq.*, and pp. 454 *et seq.*

[2] Cf. *International Survey of Legal Decisions on Labour Law*, 1930, Italy, No. 24.

[3] Cf. *opus cit.*, 1929, Italy, No. 10.

[4] *Ibid.*, No. 11.

The Parties and their Representatives. — In labour disputes the parties may appear in person or be represented either by a solicitor or by the secretary of the legally recognised association or by the person acting in his stead, who may himself appear in person or through a solicitor. The assistance of an advocate is permitted in proceedings before the appeal courts only.

To facilitate the adjustment of disputes the representative must also be given power to accept a compromise. Moreover, the magistrate or the president of the court may at any time order the appearance of the parties in person.

From the time he has attained the age of fifteen years a minor who is a party to a dispute has all the rights of an adult person, but the tribunal may require that he be assisted by his legal guardian if this is deemed desirable. Also in urgent cases the magistrate or the president of the court may grant *ex officio* free legal assistance to an indigent party.

Procedure

The proceedings in the judicial settlement of labour disputes are governed by the detailed rules contained in the Individual Disputes Act of 1934, which reproduces those laid down by the 1928 Act and introduces a few minor additions. It is unnecessary to describe in detail such administrative regulations as those which specify that documents and judgments are to be drawn up on paper bearing a stamp of 3 lire in proceedings before a magistrate, a stamp of 5 lire in proceedings before the appeal courts or of 10 lire in Supreme Court cases; and that the stamp duties or registration fees payable with respect to judgments are to be reduced to a half of what they are in ordinary civil actions. But some of the main features of the proceedings are of interest, particularly as regards the part played by the legally recognised associations.

Intervention of the Legally Recognised Associations. — One of the characteristic features of the procedure followed in the settlement of labour disputes in Italy is that in the cases coming under subsections 1 and 2 of section 1 cited above an action cannot be maintained before the Courts unless notice of the dispute has first been given to the legally recognised association for the category to which the complainant belongs, even if he is not a member of the association. That association must offer its services for the settlement of the dispute in collaboration with the association for the category to which the defendant belongs.

The 1934 Decree added a new provision to the effect that if the dispute is settled and the amount involved does not exceed 5,000 lire, a record of the conciliation agreement signed by the parties and by the secretaries of the two associations or by the persons acting in their stead and deposited with the magistrate's court shall be deemed to have executory force within the meaning of the Civil Procedure Code. If conciliation proceedings are unsuccessful, the association must give notice thereof to the complainant, who after the expiration of a period of two weeks may institute judicial proceedings.

The rôle of the associations does not stop there. In the cases specified under subsections 1 and 2 of section 1, where an action is based on the non-fulfilment of a collective agreement or of rules which have the force and effect thereof, the legally recognised associations may intervene at any time, even at the appeal stage and even though notice

has not been given by them. In such cases proceedings before the labour tribunals will be adjourned at the request of the association, of the parties or *ex officio*, if the settlement of the case is connected with a collective dispute, in respect of which proceedings between the associations concerned are actually pending before the labour judiciary in accordance with section 17 of the Trade Associations Act of 3 April 1926 [1], which provides that "actions relating to disputes arising from collective relations connected with employment shall be brought exclusively by legally recognised associations..." before the labour sections of the appeal courts.

Preliminary Proceedings. — The lodging of a complaint or of an intervention in labour matters is subject to definite formalities laid down in the 1934 Decree. The application must be in writing, signed by the parties or their representatives, and must contain various particulars, such as the names and addresses of the parties, and give the grounds of the claim. It must be accompanied by a sum sufficient to cover the cost of communicating the application and the relevant documents to the other party. At the same time that he communicates these various documents, the clerk of the court fixes a date for the preliminary hearing.

If the plaintiff fails to appear at this hearing and the defendant does not request that the case be heard in default of the plaintiff, or if both parties fail to appear at any other stage of the proceedings, the case is struck off the list. If the defendant fails to appear at the preliminary hearing or if one of the parties fails to appear later, the proceedings are continued by default. The defaulting party may intervene subsequently and show cause for his absence, but the orders or decisions issued meanwhile remain valid.

The purpose of the preliminary hearing is to allow the parties to raise questions of competence and of procedure, to indicate their intentions as regard the dispute or to withdraw their claims. If they persist in the dispute, the magistrate or the president of the court must first endeavour to persuade them to come to an amicable arrangement. This attempt at conciliation must be renewed at any time whenever an opportunity arises in the course of the proceedings.

Here again the 1934 Decree introduced an element of progress by stipulating that in the event of an agreement being reached, it must be signed by the parties, the magistrate or the president of the court and the clerk, and then filed with the clerk, who is by order authorised to issue a copy of it in executory form.

When conciliation fails at the preliminary hearing the case may, upon the joint request of the parties, be heard at that hearing. If no such request is made, a date not more than twenty days later must be fixed for the trial.

The Trial. — The trial of a labour dispute before the magistrate or the court of first instance is very similar to a trial in ordinary civil cases.

The Act lays down various time-limits for the production of the evidence and the hearing of witnesses. It is in this particular respect that the assistance of the assessors is specially valuable. Whenever it is deemed necessary, enquiries may be ordered. One or more technical advisers may be appointed to assist the tribunal during the whole

[1] *L.S.*, 1926, It. 2.

of the enquiries or any particular part of them if the nature or the complexity of the investigations renders this measure necessary. The experts give their opinion in chambers, or by a statement in writing. The court deliberates separately. At the termination of the enquiry the Court summons the parties to a hearing which must be held not more than twenty days later. Unless it is impossible to settle the case at that hearing, no further adjournment is allowed.

Judgment and Execution. — Once a decision has been reached by the magistrate or the tribunal respecting the whole or part of a dispute, judgment is pronounced. A judgment is also pronounced when for reasons of lack of jurisdiction or other reasons it is impossible to settle the dispute.

A judgment may specify how the costs of an action are to be borne. It may also grant an order for provisional enforcement on behalf of the party who so requests. Before the 1934 Act judgments which were subject to appeal could only be enforced in respect of that part which was dealt with by the order for provisional enforcement. But under that Act the tribunal may, if it appears that a stay of execution could be a source of injustice, order the whole judgment to be enforced in spite of the appeal. If the amount involved in the judgment or in that part of the judgment which is the subject of an order for provisional enforcement exceeds 2,000 lire, the tribunal may, if serious reasons render this desirable, reduce that amount or even effect a stay of execution.

These rules also apply to the execution of arbitration awards which, as mentioned above, may be resorted to for the settlement of individual disputes. But they are not of course applicable to the execution of decisions arrived at by the intervention of the trade associations concerned or by amicable settlement between the parties, since there can be no appeal against a settlement which is the result of conciliation proceedings.

Appeals. — Appeals against the decisions of the magistrate or of the court of first instance may be lodged before the labour courts and from them the appeal may in certain cases be taken to the Supreme Court.

The labour sections of the Appeal Courts — *Magistrature del lavoro* — which serve as courts of appeal for individual labour disputes were established in virtue of the Trade Associations Act of 1926 [1] as courts of first instance for the judicial settlement of collective labour disputes which could not be adjusted by the conciliation efforts made by the occupational associations, the corporation or the Ministry of Corporations. They consist of special sections of the regular courts of appeal and are composed of three judges — one a president of a section of the court of appeal and the other two councillors of the court of appeal — together with two citizens, who must be experts in problems of production and labour, specially appointed on each occasion, with proper judicial functions [2].

The Appeal Courts are competent to hear appeals whenever the amount covered by the judgment exceeds the sum of 2,000 lire. The

[1] *L.S.*, 1926, It. 2.

[2] The operation of the labour sections of the Appeal Courts with respect to collective labour disputes has already been described in *Conciliation and Arbitration in Industrial Disputes* on pp. 439 *et seq.*

appeal must be lodged within fifteen days from the time of the communication of the judgment to the party concerned and no interlocutory decision affecting either questions of law or of procedure may be contested otherwise than in conjunction with the final judgment.

An appeal may also be lodged, in conformity with the provisions of the Civil Procedure Code, against arbitration awards rendered in individual labour disputes, in which the sum involved exceeds 2,000 lire. In labour cases however the security for the payment of the fine prescribed in sections 499 and 506 of that Code is not required. Furthermore the provisions of section 87 [1] of the Royal Decree of 1 July 1926 apply, and the task of the Appeal Court may be either to review, to quash or to annul the decision appealed from.

There may be in the last resort an appeal to the Supreme Court against the final decision of the Appeal Courts. At the same time preliminary judicial decisions rendered by the labour courts may also be attacked.

The procedure in the Supreme Court is governed by the rules of the Civil Procedure Code subject to the provisions of sections 90 and 91 of the Royal Decree of 1 July 1926 relating to the intervention of the Crown Attorney of the Appeal Courts in labour disputes. The object of an appeal to the Supreme Court is the annulment of the judgment of the lower court. If the decision is annulled the Supreme Court may refer the case back to the court which had rendered the judgment or to another court. And the court to which the case is referred back must in every case comply with the decision of the Supreme Court respecting the point of law on which the latter has given a decision. It is provided that in the interest of law the Attorney-General of the Supreme Court has the right to appeal *ex officio* against decisions of the courts in labour matters, in conformity with section 519 of the Civil Procedure Code.

Apart from the labour judiciary described above, there also exist special tribunals with compulsory powers to settle disputes arising out of the application of certain decrees concerning such labour matters as compensation for occupational accidents, invalidity and old-age insurance, and other less important matters. But space does not allow a description of them here [2].

3. Results

Two reports on the work of the labour courts have so far been published by the Ministers Keepers of the Seals. The data relate to collective disputes and individual disputes separately ; only the latter are of interest to the present study and the figures given here relate to them alone.

The first report covers the period from the date the new legislation came into operation, that is to say, as regards individual labour disputes, from 1 October 1928 to 30 November 1933.

[1] This section deals with the annulment of awards made in individual disputes when such awards are incompatible with a subsequent decision of a labour court respecting collective relations which affect the same parties.

[2] Cf. " Note on competent authorities having jurisdiction in labour matters " in *International Survey of Legal Decisions on Labour Law*, 1934-35, Italy, pp. XXXIII *et seq.*

Table I below summarises the data given in this report.

The second report relates to 1934. It gives more detailed statistics, in particular as regards the number of appeals pending at the beginning and the end of the year, and of favourable and unfavourable judgments.

The statistics are summarised in table II below.

TABLE I

Year	Magistrates *(pretori)*				Courts of first instance				Appeal Courts *(Magistrature del lavoro)*			
	Cases lodged during the year	Settled by :			Cases lodged during the year	Settled by :			Cases lodged during the year	Settled by :		
		Abandonment	Conciliation	Judgment		Abandonment	Conciliation	Judgment		Abandonment	Conciliation	Judgment
1928 [1]	1,359	271	243	712	652	67	157	350	252	18	63	113
1929	6,623	1,259	1,331	3,555	3,286	578	685	2,260	1,461	152	333	860
1930	13,157	2,712	2,682	6,418	5,951	624	1,142	3,755	2,248	209	469	1,351
1931	16,424	3,532	4,432	8,693	7,653	992	1,259	4,927	3,029	248	557	1,987
1932	23,249	4,088	5,257	12,829	9,367	1,067	1,548	6,137	3,512	269	794	2,333
1933 [2]	28,374	2,911	5,846	17,220	11,119	969	1,470	7,577	5,028	225	856	3,447
TOTALS	89,186	14,773	19,791	49,427	38,568	4,297	6,261	25,066	15,530	1,121	3,072	10,091

[1] Three months (from 1 October to 31 December).
[2] Eleven months (from 1 January to 30 November).

TABLE II

Judicial authorities	Cases pending at the end of 1933	Cases lodged during 1934	Settled by :				Cases pending at the end of 1934
			Abandonment	Conciliation	Judgment :		
					Favourable	Unfavourable	
Magistrates *(pretori)*	4,690	27,406	9,192	5,537	8,176	2,656 [1]	6,535
Courts of first instance	1,761	6,575	2,066	645	2,815	1,150 [2]	1,660
Courts of Appeal *(Magistrature del Lavoro)*	712	2,552	516	186	1,002 [3]	1,020 [2]	540

[1] Including rulings of incompetence.
[2] Quashing, annulling or modifying the decisions of the lower court.
[3] Confirming decisions of the lower court.

The two reports bring out the large proportion of disputes settled by conciliation. Of the total cases appearing in the first table 60 per cent. were settled by a judgment, 20 per cent. by conciliation, 14 per cent. were abandoned, and 6 per cent. (9,449) were pending at the end of the period covered. A second calculation may be given for 1934, that of the relation between the number of disputes settled by judgment and of those settled by conciliation. As compared with 16,819 individual disputes settled by a judgment in 1934, there were 6,368 settled by amicable agreement, giving a percentage of 37.86 per cent. of the total settled by conciliation ; 5,537 of these came before the magistrates only *(pretori)*, 645 before the courts of first instance, and 186 before the courts of appeal *(Magistrature del Lavoro)*.

The second report also gives the first results of the preliminary action taken by the trade associations, which was made compulsory by the Legislative Decree of 21 May 1934 (see page 116 above).

The figures cover half a year, i.e. the period from 1 September 1934 (the date on which the Decree of 22 May 1934 came into force)

to 28 February 1935. During this first half-year of the application of the new Decree, 88,563 disputes were referred to the trade associations, of which total 62,082 were settled by conciliation, a proportion of 70.09 per cent. This high percentage is evidence of the efficacy of the new regulations.

4. Summary

In Italy individual labour disputes are adjudicated upon by the magistrates or the law courts of first instance, against the decisions of which appeals may be lodged before the labour section of the Appeal Courts and the Supreme Court. The composition of the magistrate courts and law courts is modified by the addition of two assessors, one representing the employers and one the employees, selected from among persons nominated by the provincial economic councils on the recommendation of the legally recognised trade associations. The Appeal Courts consist of special sections of the regular Appeal Courts and are composed of three judges and two assessors.

The magistrates and the law courts of first instance are competent, within the limits of their respective jurisdiction with regard to the sum involved, to adjudicate upon individual disputes arising out of employment relations which are or may be governed by collective agreements or other rules having the force and effect of collective agreements. The Royal Decree of 21 May 1934 extended the jurisdiction of the tribunals to disputes relating to share tenancy governed by collective agreements and to those which arise out of the employment relations of persons employed by public bodies. Labour jurisdiction does not however exclude recourse to arbitration proceedings in accordance with the provisions of the Civil Procedure Code.

As a rule the parties to a dispute need not appear in person at the proceedings. The whole procedure is governed by detailed rules contained in the 1934 Decree. One noteworthy feature of the system is that in most cases no action can be maintained unless notice of the dispute has first been given to the legally recognised association for the category in which the complainant belongs. That association must then, in collaboration with the association for the category to which the defendant belongs, endeavour to settle the disputes by means of a conciliation agreement which under certain conditions will be given executory force.

If conciliation is unsuccessful the action is begun by a preliminary hearing, during which the tribunal again attempts to settle the dispute by agreement between the parties. It is the duty of the court to renew conciliation measures at any stage of the proceedings whenever a favourable opportunity arises. Any amicable settlement between the parties will have the force of a judicial decision.

When the parties persist in their contentions the matter is settled by a judgment, which may be executed in the same manner as a judgment rendered in ordinary civil cases.

An appeal against an arbitration award or the decision of the courts may be lodged before the Appeal Courts when the amount in dispute exceeds the sum of 2,000 lire. The purpose of the appeal may be either to review, quash or annul the decision against which the appeal is made. The judgments of the Appeal Courts are themselves subject to a further appeal to the Supreme Court, which may annul the decision of the lower court, in which case the matter is referred back to a lower court for a new trial in accordance with the rules laid down in the Civil Procedure Code.

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MEXICO

1. INTRODUCTION

In Mexico there are no labour courts set up exclusively for the adjustment of individual labour disputes. Such disputes must be settled by the joint boards of conciliation and arbitration which have been established mainly for the purpose of adjusting collective labour disputes. The system of joint boards was introduced by the Federal Labour Act of 18 August 1931[1], which brought within the federal

[1] *L.S.*, 1931, Mex. 1. Parts Eight and Nine.

sphere numerous subjects of labour legislation that had been entrusted to the constituent States by the Federal Constitution of 1917. The Constitution of 1917 had merely drawn from the experience acquired by the individual States during the previous years, and laid down certain guiding principles for the purpose of securing uniformity in the settlement of labour disputes. But it remained for the Federal Act of 1931 in introducing a new social policy for Mexico, to bring the whole matter of labour disputes under a central authority so as to have a *uniform system* for the entire country.

2. The System in Force

The role played by the conciliation and arbitration boards in the adjustment of collective labour disputes has already been described in a previous study published by the International Labour Office[1]. It will suffice here to show that these joint boards serve for the adjustment of individual labour disputes. There are municipal conciliation boards, central conciliation and arbitration boards, Federal conciliation boards, and a Federal conciliation and arbitration board. The task of the conciliation boards is to settle all labour disputes by means of conciliation, and, failing conciliation, to refer the matter to the competent conciliation and arbitration board for settlement by an award which may be compulsorily enforced.

It will not be necessary to repeat here what has been said in the work referred to above with regard to the constitution and composition of the boards[2]. But it may be useful to recall that they are composed of a chairman, appointed by either the local or State authorities, and of an equal number of employers' and workers' representatives elected respectively by the employers' and workers' groups for the various branches of industry or groups of different occupations, in accordance with detailed rules contained in the Labour Act.

It should be added that the Federal Labour Act of 1931 also provides for the institution of a labour inspection service and of a federal office for the protection of labour, whose officials may propose to the parties concerned the amicable adjustment of their differences. But neither of these categories of officials is entrusted with judicial functions.

Competence of the Boards. — The municipal boards are competent to deal for purposes of conciliation with individual disputes which arise out of a contract of employment or matters closely connected therewith, between employers and employees, or between employers alone or employees alone, provided the subject of the dispute does not come within the competence of the Federal boards. If the parties fail to come to an agreement, the municipal boards are under an obligation to refer the matter to the competent central conciliation and arbitration boards for arbitration.

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, 1933, pp. 584 *et seq.*

[2] *Ibid.*, p. 589.

The central conciliation and arbitration boards are not competent to deal with individual disputes when in plenary session. Only the special groups of the board constituted for the purpose of handling special classes of disputes which are related to certain branches of industry have jurisdiction with regard to individual disputes. Here again the powers granted by the Act are limited to conciliation and arbitration, but the procedure being compulsory, the results obtained are very much the same as under a judicial system.

The Federal conciliation boards discharge within the federal sphere the same functions as are performed by the municipal boards in the various localities. Their intervention in matters within their competence is limited to helping the parties to arrive at an understanding, and, where conciliation fails, to submitting the dispute to the Federal conciliation and arbitration board for arbitration purposes. The jurisdiction of the Federal boards is limited to disputes arising out of a contract of employment or matters closely connected therewith between employers and employees, or between employers alone or employees alone, in undertakings or industries operated under a Federal concession or carried on wholly or in part in the Federal zones or industries under local jurisdiction when the dispute concerns two or more Federal States or Territories. These include individual as well as collective disputes.

The Act also lays down special rules concerning the territorial jurisdiction of the boards in the cases where there exists concurrent jurisdiction among various boards having equal powers.

The Parties and their Representatives. — When a person who is unknown to the board appears either as plaintiff or defendant, he must prove his identity by oral statement or by any other means which the board deems sufficient. The parties to a dispute need not appear personally, but their representatives must have a power of attorney unless the board decides otherwise, as, for instance, when it is manifest from the documents produced that there can be no error about their identity.

Trade associations of employers or employees may appear before the boards in defence of their collective rights or of the individual rights of their members as such, without prejudice to the latter's right to take action directly.

But the advisers of the parties are not admitted to the hearings during the conciliation procedure. There the parties must appear in person unless the board finds that there is sufficient justification to admit representatives.

The litigants may also be represented before the boards by the officials of the Federal Office for the Protection of Labour set up under the Federal Labour Act of 1931. These officials are entrusted with the following duties :

" 1. to represent and advise employees or industrial associations constituted by employees or represent them before the competent authorities whenever requested, in differences and disputes which arise between them and their employers with reference to a contract of employment ;

" 2. to institute all the ordinary and extraordinary proceedings which may be necessary for the protection of an employee ;

"3. to ensure the prompt and expeditious administration of justice by the labour courts, and to take the necessary measures in conformity with this Act to ensure that awards and decisions are issued within the corresponding statutory time-limits."

Procedure

The Labour Act contains numerous provisions concerning the procedure to be followed before the conciliation and arbitration boards. It specifies in detail the grounds which may be alleged for the challenge of a member of the board. If the challenged person is a representative of the employers or of the workers, the challenge is decided upon by the chairman of the board, and if the person challenged is the chairman of the board, then the challenge is examined by the Governor of the State or Territory or the head of the competent Federal Department, as the case may be.

The detailed rules governing the procedure before the joint boards are in many respects similar to those which may be found in a code of procedure for the ordinary courts of law. Each step of the proceedings is well regulated from the time of the service of the writ of summons on the party against whom the claim is brought to the moment the award is made. The various time-limits, the penalties which may be imposed on the parties, witnesses and experts for infringing the orders of the boards, as well as the fines against members of the board who do not perform the duties entrusted to them, are all clearly specified in the Act. Provision is also made for the different cases where the chairman of a board may, at the request of a party, issue a writ of sequestration against the property of the person against whom the action is taken. The claimant may even petition the board for an injunction forbidding the person against whom he intends to bring an action to leave the locality.

The procedure also varies according to whether the claim is brought before the municipal and Federal conciliation boards or before the central and Federal conciliation and arbitration boards.

Awards and Execution. — The various rules governing the procedure before the joint boards are designed to hasten the settlement of disputes. This is also the case as regards the execution of the awards made by the central boards and the Federal Board. If the parties are present when an award is pronounced, it is the chairman's duty to question them as to what satisfactory arrangement could be made for a prompt compliance with the award.

If the party against whom the award was made is compellable to pay a sum of money, he may propose a solvent person as surety in guarantee of payment and the chairman then grants a time-limit not exceeding eight days, or a longer period of time if the claimant consents, for the final settlement. If at the expiration of this period of time the required sum is not paid, proceedings may be instituted against either the debtor or the guarantor.

The proceedings against the debtor may be in the form of a distress warrant to seize sufficient property to cover the amount of the sum due and the expenses. The Act mentions certain classes of property such as household articles, implements, tools and animals used for work, etc., which cannot be seized, and lays down the procedure to be followed according to the nature of the property that is seized.

If the award includes an order to perform a certain act and it is not carried out within the time-limit specified for that purpose, such act will be performed at the expense of the party liable, or else damages may be claimed, whichever alternative the claimant chooses. An employer who refuses to submit a dispute to arbitration or to accept the award of a board is liable to have the contract of employment in question declared terminated and be sentenced to pay the employee by way of compensation a sum equivalent to three months' wages or more, according to the length of time for which the contract was concluded. Whereas if the award contains an injunction not to do a certain act and the injunction is not obeyed, an option is granted the claimant either to have the former state of affairs restored, if that is possible, at the expense of the defendant, or to be given damages.

It follows from the foregoing statements that the Labour Act gives to the awards of the conciliation and arbitration boards very much the same force as is attached to the decisions of ordinary courts of law, and, what is more, there are no appeals against such awards. There is however one exception to this rule in the case of compensation for incapacity arising out of an injury caused by an industrial accident or occupational disease. In such a case the party concerned may, within one year of the date on which compensation was assessed either by agreement of the parties or by an award of the board, apply for the revision of the agreement or award if evidence can be produced to show that in the meantime the incapacity caused by the injury has been aggravated or diminished.

3. Results

The table given below is self-explanatory and will give the reader some idea of the variety of labour disputes adjusted by the federal conciliation and arbitration machinery which has been in operation in Mexico during the last few years. While the object of this study is mainly to give a survey of the machinery in existence in the different countries for the judicial settlement of individual disputes, in order to appreciate recent developments in Mexico it is necessary to consider to some extent the nature and number of collective disputes so adjusted, since the machinery there in use is the same for individual as well as for collective disputes.

It is obvious that the disputes coming under the topics relating to the conclusion of individual contracts of employment, termination of contract, wrongful dismissals, deductions from wages, payment for overtime, compensation for injuries resulting from accidents or occupational diseases, and other topics mentioned in the table below, include mostly individual labour disputes, although the statistics which are available do not give separate figures for individual and collective disputes.

It will be observed that the number of cases adjusted by conciliation agreements is larger than the number of disputes settled by arbitration awards. The latter, as has been noticed above, may be enforced compulsorily and therefore have the same force and effect as the decisions of labour courts in other countries.

STRIKES, LOCK-OUTS AND OTHER LABOUR DISPUTES SETTLED IN 1935 AND 1936 [1]

Method of settlement	Federal Boards of Conciliation and Arbitration						Federal Boards of Conciliation, and Federal Labour Inspectors	
Nature of disputes	Strikes		Lock-outs		Individual and collective disputes		Individual and collective disputes [2]	
Year	1935	1936	1935	1936	1935	1936	1935	1936
Number of disputes	410	377	30	77	3,453	3,398	687	798
Workers involved	132,651	100,791	4,627	9,893	8,260	367,786	1,083	5,559
Causes :								
Conclusion of collective contract	135	1	—	—	134	—	14	134
Conclusion of individual contract	0	—	—	—		—	45	
Non-compliance with contract	0	50	—	—	—	—	—	19
Breach of contract	22	55	—	—	123	—	31	6
Termination of contract	0	0	—	—	250	—	—	17
Wrongful dismissal	—	—	—	—	707	—	74	26
Differences in wages	0	28	—	—	320	—	31	61
Deductions from wages	0	11	—	—	127	—	31	48
Overtime	0	111	—	—	65	—	32	36
Occupational diseases	—	—	—	—	444	—	64	106
Accidents	—	—	—	—	389	—	86	165
Death	—	—	—	—	372	—	74	62
Force majeure	—	—	5	9	—	—	—	—
Lack or loss of capital	—	—	10	0	—	—	—	—
Lack of raw material, electrical power, etc.	—	—	4	52	—	—	—	—
Solidarity with other workers	163	35	—	—	—	—	—	—
Miscellaneous	90	86	11	16	522	—	265	118
Settlement :								
Arbitration award	11	24	15	4	1,020	846	—	—
Conciliation agreement	177	340	15	71	1,854	2,356	687	798
Withdrawal of claim	222	13	0	2	579	196	—	—

[1] Departamento del Trabajo : *Memoria Anual para 1935, idem 1936*, Mexico.

[2] Apart from these disputes and independently of the Federal Boards of Conciliation, the Federal Labour Inspectors settled, in 1935 and 1936 respectively, 495 and 755 other disputes, and dealt with 1,988 and 2,900 cases of compensation due to workers for occupational injury.

4. Summary

In Mexico there are no separate tribunals for the judicial settlement of individual labour disputes, but the municipal and Federal conciliation boards, as well as the central and Federal conciliation and arbitration boards established under the Federal Labour Act of 1931 for the purpose of adjusting collective disputes, also serve in the adjustment of individual disputes.

These different boards are composed of a chairman appointed by the local or State authorities and of an equal number of employers' and workers' representatives elected by the respective employers' and workers' groups. Their competence is limited to settling by means of conciliation or of an award having executory force all individual (and collective) labour disputes which arise out of a contract of employment or matters closely connected therewith between employers and employees, between employers among themselves, or between employees alone.

The jurisdiction of the municipal and central boards extends to all such disputes which do not fall within the jurisdiction of the Federal boards, and the latter are competent to deal with disputes in undertak-

ings or industries under Federal control or in industries under local jurisdiction when the dispute affects two or more Federal States or Territories.

As a general rule the parties must appear in person for the conciliation proceedings, but may be represented in arbitration cases.

The Act lays down detailed rules relative to the procedure before the boards as well as for the execution of the awards, which have the same force as a judicial decision rendered by an ordinary court of law. No appeal is allowed against the awards of the boards save in cases of compensation for occupational injury.

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NORWAY

1. Introduction

In Norway the establishment of special machinery for the adjustment of labour disputes has received the attention of the legislator ever since the middle of the nineteenth century. A law passed on 15 June 1881 provided for the setting up of industrial courts in each town to handle individual disputes between employers and their workers or apprentices. These courts were composed of a judge assisted by two assessors selected one from each of the employers' and workers' groups. Appeals against their decisions could be lodged before the same judge assisted by four assessors or in certain cases before the Supreme Court. Little use, however, seems to have been made of these special tribunals and the 1881 Act, after being modified in minor respects by the amending Act of 18 July 1919, was finally repealed at the time of the coming into force of the new Code of Civil Procedure on 1 July 1927.

In the meanwhile efforts were being made to devise some compulsory procedure for the adjustment of collective labour disputes.

In order to overcome the opposition shown by the employers as well as by the workers to the institution of a system of compulsory arbitration which meant the compulsory intervention of the State in the settlement of collective disputes, the first Bill submitted to the Storting in 1912 drew a distinction between disputes which arise out of employment conditions not covered by collective agreements, sometimes described as disputes about interests or non-justiciable disputes, and disputes relating to the existence, validity or interpretation of a collective agreement, which are referred to as " disputes about rights " or justiciable disputes.

The purpose of the Bill was to establish a special Labour Court to deal with justiciable disputes, leaving non-justiciable disputes for settlement by compulsory conciliation and arbitration. So much opposition was manifested on the part of both employers and workers to compulsory arbitration that this part of the Bill was left out in the final text of the Labour Disputes Act, which became law on 6 August 1915. But in 1916 a Compulsory Arbitration Act was passed empowering the Government to resort to compulsory arbitration if it considered a dispute to be such as to endanger important public interests.

While it is not necessary to repeat here what has already been said on that subject in previous publications of the Office [1], it should be pointed out that conciliation and arbitration procedure, even when compulsory, must be differentiated from the judicial proceedings before the Labour Court. Compulsory conciliation signifies that the State intervenes *ex officio* through a permanent conciliator in all disputes about interests and prohibits stoppages of work for a definite period of time while attempts at conciliation are being made. Compulsory arbitration meant that in certain classes of disputes the Government could prohibit the organisation or continuation of a stoppage of work and impose on the parties the conditions of work laid down by a board composed of a chairman and two members and their substitutes appointed for each case by the Crown and one member and a substitute appointed by each of the Federation of Trade Unions and the Federation of Employers' Associations [2]. This procedure was usually resorted to when conciliation had failed.

The characteristic feature to be noticed is that the proceedings for the adjustment of disputes about interests by either compulsory arbitration or compulsory conciliation were initiated by the State, whereas in the case of disputes about rights the judicial proceedings before the Labour Court were begun by the parties concerned. Each of the parties to a dispute could cause the other to be summoned for the trial of the case before the Court although no previous arrangement to that effect had been made.

In the course of time various changes were made in the two Acts referred to above. The compulsory Arbitration Act of 1916, originally intended as a war measure, was kept in operation for a much longer period of time. It subsequently became part of the Labour Disputes Act of 5 May 1927 [3], subject to the condition that it would only remain in operation until 1 August 1929. Since that date there is no general law on compulsory arbitration in Norway. However, by an Act of 6 July 1933, a special compulsory arbitration procedure has been provided for a special undertaking — namely, the S.A. "Vinmonopolet" (State wine monopoly). That Act was originally intended to remain in force until 1 August 1935 only, but a supplementary Act of 7 June 1935 prolonged its existence for an indefinite period.

The Act prohibits stoppages of work by the workers and officials of this State undertaking, and disputes arising out of questions of salary and other conditions of work which cannot be adjusted amicably

[1] *Conciliation and Arbitration in Industrial Disputes*, pp. 359 *et seq.* See also *International Labour Review*, Vol. XXVIII, No. 6, December 1933: "Legislation on Labour Disputes in Norway", by Paal Berg.

[2] *Annuaire de la législation du travail*, Brussels, 1914-1919, Tome III, p. 489.

[3] *L.S.*, 1927, Nor. 1A.

are to be settled by compulsory arbitration. For this purpose there was set up a special arbitration board composed of five members appointed for a period of three years by the Chief Justice of the Supreme Court. Three of these members, among whom are the chairman and vice-chairman, must not be considered as representatives of the interested parties. Of the other two members, one is appointed by the "Vinmonopolet" and the other by the workers and officials of the undertaking.

In addition, an Act promulgated on 16 February 1938 provides for the appointment of an *ad hoc* compulsory arbitration court to settle two disputes in the transport and fish-marketing trades. This court is composed of five members, two being representatives of the litigants, namely, the Federation of Trade Unions and the Employers' Federation[1].

The Labour Disputes Act of 1915 was also incorporated with certain modifications in the Labour Disputes Act of 1927. Practically no changes were made with regard to compulsory conciliation. The Labour Court, on the other hand, had the number of its members raised from five to seven. Formerly the chairman had alone represented the neutral element in the Court, the other members being chosen in equal numbers from among the employers and the workers, whereas now there are three neutral members in the Court.

Another difference is that under the 1915 Act a trade organisation could not be made liable for the failure of its individual members to refrain from militant action or to observe other obligations under a collective agreement unless the injured party could show that the organisation shared the responsibility for the infringement. The new Act shifted the burden of proof on to the trade organisation, so that it is now liable for the infractions of its individual members, unless it can show that it had no responsibility in the unlawful actions and that it endeavoured by all means in its power to prevent the continuance of the unlawful situation. The Act thus makes it possible to hold an organisation responsible for unlawful stoppages of work which are suspected of being instigated by the responsible officials of the organisation, although no conclusive evidence to that effect can be adduced.

Under the earlier Act a fine could be imposed by the Court as a penalty upon an individual worker or employer as well as upon the members of the management and the officials of the organisations who took part in an unlawful stoppage of work. This provision was amended in 1927 so as to exclude from liability to a penalty the individual worker who does no more than take part in a strike approved by his organisation. In the cases where it can be imposed the penalty may now be either a fine or imprisonment up to three months or both.

The new legislation gives the Labour Court power to authorise under certain conditions a stoppage of work as a means of securing the observance of the decision it may have made in connection with a dispute about rights. This point is dealt with below in the section on the competence of the Labour Court.

2. The System in Force

The main legislative measure at the basis of the judicial labour machinery in force in Norway at the present day is the Labour Disputes Act of 5 May 1927, which embodies, as has been stated, the principal provisions of the 1915 Act concerning compulsory conciliation and the

[1] *Arbeiderbladet*, 5-23 February 1938.

Labour Court. An amending Act dated 19 June 1931 [1] introduced certain changes affecting only compulsory conciliation. But further amendments affecting the judicial settlement of collective disputes were made by the Labour Disputes Act of 6 July 1933 [2]. That Act provided for the establishment of another court to deal specially with boycotts. A boycott is there defined as : " an invitation, incitement, joint decision or other act which aims at preventing or hampering business intercourse between an individual or an undertaking and third parties with the object of coercing, injuring or punishing anyone ".

The Boycott Court has its seat in the capital of the Kingdom. It consists of a chairman, a vice-chairman and three members, with two substitutes for the vice-chairman and two for each of the other three members. They must satisfy the same requirements as apply to the members of the Labour Court and are appointed by the Crown for a term of three years. The same penalties may be imposed in the case of unlawful boycotts as in the case of unlawful strikes or lock-outs. The Act describes at great length the circumstances in which a boycott is deemed to be unlawful. In a general way it may be said that any boycott is unlawful when it has been put into operation without due notice to the person against whom it is directed, if it is effected or carried on by unlawful means, or else if its object is unlawful or again if it is put into operation without the consent of the Boycott Court. Furthermore, it is specified that a boycott will be considered as unlawful if it is resorted to " in order to settle a dispute between a trade union and an employer or an employers' association, respecting the regulation of conditions of employment or wages or other matters relating to employment which are not covered by a collective agreement ", before the required notice has been communicated to the State Conciliator.

Disputes which fall under the jurisdiction of the Boycott Court cannot be adjudicated upon by any other judicial tribunal, but the parties may nevertheless agree to have recourse to private arbitration procedure. Such disputes are considered as justiciable for the reason that they arise in contravention of the provisions contained in the 1933 Act. Other disputes relating to unlawful stoppages of work contrary to the terms of a collective agreement are also deemed to be disputes about rights and come within the competence of the Labour Court described in the following pages. The various rules concerning preliminary conciliation efforts, the trial of the case, appeals, and other relevant rules of procedure laid down in the 1927 Act apply, *mutatis mutandis*, to the Boycott Court as well as to the Labour Court.

Constitution and Composition of the Court. — The Labour Court has its seat in the capital of the Kingdom, but if the circumstances of the case so require sessions may be held in other parts of the country.

This Court is composed of one chairman and six members with two substitutes for each member. The chairman and two members, one of whom must have the qualifications prescribed for judges of the Supreme Court, are appointed independently by the Crown. Their substitutes are appointed in the same manner. The other four members and their substitutes are also appointed by the Crown, but are chosen one-half from a list of nominations made by the employers' associations and one-half from a list submitted by the trade unions.

[1] *L.S.*, 1931, Nor. 1.

[2] *L.S.*, 1933, Nor. 2.

Nominations may be received from employers' associations having a membership of not less than 100 employers who employ in all not less than 10,000 persons, and from trade unions with a membership of at least 10,000. When nominations are not submitted within the time-limit fixed by the competent Department the appointments are made without them.

Among other qualifications, the members of the Court must have attained the age of thirty years, be solvent and of Norwegian nationality. They must not be members of the executive committee of a trade union or an employers' association nor be permanent employees of such a union or association. To serve on the Court they must take an oath.

When a member of the Court or a substitute dies, is released from office or ceases to satisfy the requirements specified in the Act, he is replaced for the remainder of his term of office by a person appointed in accordance with the foregoing rules.

The salaries of the members and officials of the Court and the expenses incurred in the working of the Court are paid by the State Treasury. The members of the Court are also entitled to travelling expenses and a subsistence allowance when they are required to travel in fulfilment of their official duties. The Court may nevertheless order one or both of the parties to reimburse the State Treasury for all or part of the costs of the proceedings.

Competence of the Court. — The Labour Court has exclusive competence in all matters pertaining to a breach of a collective agreement or to an unlawful stoppage of work. An individual claim based on a contract of employment may be included in an action concerning a collective agreement if both can be settled by one and the same award. In that case the interpretation of the collective agreement given in the award applies to all contracts of employment based on that collective agreement. The Court is also competent, as between a trade union and an employer or an employers' association, to settle all disputes which concern the validity, interpretation or existence of a collective agreement, or a claim based on a collective agreement. This obviously includes individual as well as collective disputes.

Once the Court has made an award to the effect that some breach of the collective agreement has been committed or that a stoppage of work contrary to its provisions has taken place, and the unlawful action is not remedied within four days after the issue of the award, it may, at the request of the injured party or of the organisation of which he is a member, give its consent to a declaration of a strike or lock-out. Until then any strike or lock-out is unlawful.

The Court may condemn to a fine varying from 5 to 25,000 kroner or to imprisonment for not more than three months any employer or representative of an employer who institutes or continues an unlawful lock-out. Either or both of the above penalties may also be imposed by the Court on any person who :

(a) supports a resolution for the purpose of initiating, continuing, supporting with contributions or approving an unlawful strike or lock-out, or co-operates therein ; or

(b) incites another person to initiate or continue such a stoppage of work or supports it or collects contributions or distributes contributions when collected for the purpose of initiating or continuing such a stoppage or co-operates therein ;

(c) causes or endeavours to cause another person to lose or give up his employment or to refrain from seeking or accepting employment, provided that this is done for the purpose of endeavouring to bring about a stoppage of work;

(d) incites any person to commit any of the actions specified under *(c)* or contributes thereto;

(e) causes or endeavours to cause an employer to take part in an unlawful lock-out or to refrain from employing workers who are concerned in an unlawful lock-out, or causes or endeavours to cause an undertaking to commit or refrain from any action in order to support an unlawful lock-out; or

(f) incites any person to commit any action specified under *(e)* or contributes thereto.

The application for the Court's consent to a strike or lock-out is made to the Chairman of the Court, who must convene a meeting to examine the application. But the Court is not entitled to give its consent unless the Chairman and at least one of the members appointed directly by the Crown signify their approval.

The jurisdiction of the Labour Court may in all cases be excluded by an agreement between the parties to have the matter in dispute settled by private arbitration procedure.

The Parties and their Representatives. — The Act expressly lays down that if a member of a trade union or an employers' association is guilty of a breach of a collective agreement or of an unlawful stoppage of work, the party liable will be the union or association, unless it can prove that it was not itself responsible for the unlawful situation and that it did all in its power to remedy it.

Moreover, if a collective agreement has been concluded by a trade union or an employers' association, the rights and liabilities of the individual members under the collective agreement are not enforced otherwise than by means of an action brought by or against the union or association on behalf of the person concerned. Also the members of the union or association against whom one of the parties desires to bring an action are summoned at the same time as the union or association.

Representation of the parties before the Court is permitted so long as not more than three persons appear for each party and provided also that the representatives are given unlimited powers for the conduct of the case.

Procedure

There are detailed rules of procedure to be followed in the conduct of the proceedings before the Labour Court. The only instance where the rules obtaining before the civil courts of law are invoked is in connection with the challenge of a member of the Court, in which case the member may be challenged on the same grounds as a judge in the ordinary courts of law. There may be special circumstances in which the impartiality of a member may be suspected, but they are not specified in the Act. In such cases the decision is to be taken by the Court at the request either of the parties or of the member himself.

Preliminary Proceedings. — A case is submitted to the Court by means of an application in writing addressed to the chairman.

The Act enumerates the particulars to be given in the application, to which must be added some evidence to show that the parties have endeavoured to settle the matter amicably. In the absence of

proof that the parties have entered into negotiation for that purpose, the Court cannot deal with the case. Once the chairman has received an application drawn up in proper form, he communicates it to the defendant, fixes a date and place for the hearing of the case and summons the members of the Court as well as the witnesses and experts whose evidence he considers desirable. The parties are summoned at least forty-eight hours before the trial.

The Trial. — The proceedings at the trial are for the most part oral. They are public unless the Court decides that they involve secrets of a business or association or other matters which should not be divulged. The Court calls for declarations from the parties, witnesses and experts, orders the production of documents and undertakes such enquiries as are deemed necessary.

If one of the parties fails to appear, the case is adjourned unless there is evidence that he has no valid reason for being absent. Should both parties fail to appear without justification being offered for the absence of either of them, the case is dismissed.

Witnesses and experts are under an obligation to appear before the Court, but they are also entitled to compensation and even travelling allowances in accordance with the rules laid down in the Code of Criminal Procedure.

Complete records of the proceedings are kept.

Judgment and Execution. — The decisions of the Court are taken by a majority vote except when, as already mentioned, its consent for a declaration of a strike or lock-out is requested. In that case the vote of the chairman and of at least one of the members appointed independently by the Crown must be included in the majority vote. In any event the Court cannot deal with a case and still less adopt a decision unless all the members are present.

In assessing compensation for a breach of a collective agreement or for an unlawful stoppage of work, the Court must take into consideration not only the extent of the damage occasioned by the accused but also the responsibility or unlawful acts of the injured party, who may in certain circumstances be deprived entirely of his right to compensation.

To ensure a prompt settlement of the case the Court must give its award within three days after the closure of the proceedings. If a longer period of time elapses, the reasons for the delay must be stated in the award.

With the exception of the few cases where an appeal lies to the Supreme Court, the awards and decisions of the central Labour Court are final and enforceable in accordance with the rules governing the execution of the decisions of the Supreme Court. In certain cases in which fines are imposed the sentence may specify that these are to be recovered by means of a distress warrant issued against the association on whose behalf the guilty person acted, provided that, where the latter is an official of the association, the wrongful act was not committed in violation of the rules of the association.

Appeals. — Appeals may be made to the Appeal Committee of the Supreme Court against any decision of the Labour Court disallowing an action or authorising the proceedings to be opened. In the latter case the appeal does not effect a stay of the proceedings. The time-limit for lodging an appeal is one month, reckoned from the day on which the decision was made.

A party may also lodge an appeal against a decision of the Court rendering him liable to pay a fine for contempt of court or the expenses incurred on account of his failure to appear. The right of appeal is

also granted to any person who, though not a party to the case, is required to make a declaration or take an oath or to give an undertaking to produce documents or other evidence or grant access thereto, or to pay a fine or expenses incurred on his account. In such cases notice of appeal must be given within three days from the date of the communication of the decision to the person concerned, or at once if that person is present in Court at the time the decision is given.

An appeal may also be made to the Supreme Court to have the award of the Labour Court declared null and void on the ground that the matter was not within the competence of the Labour Court.

3. Results

The table [1] given below shows the number of individual disputes which were handled by the Labour Court of Norway during the last decade. The first column indicates the number of complaints lodged during the respective years, while in the second column will be found the number of cases settled by judicial decision, and in the third column the number of actions which were taken off the docket either as a result of their having been settled by mutual consent of the parties or of their having been dismissed by the Court.

The figures given in the last colum represent the total number of cases dealt with definitively by the Court. This total seldom corresponds to the number of complaints lodged during the year. It may be either smaller or larger than the number of complaints lodged, according to whether or not cases are left pending before the Court for the coming year, or whether cases left pending from the preceding year have been dealt with along with the fresh complaints.

It is because only such individual labour disputes as relate to collective agreements can be dealt with by the Labour Court that the number of cases brought before the Court is relatively small. As regards the relation of these to collective disputes, the reader must be referred to the statistics already published by the International Labour Office in the study on *Conciliation and Arbitration in Industrial Disputes*.

INDIVIDUAL LABOUR DISPUTES

Year	Complaints lodged during the year	Cases settled by judicial decision	Actions dismissed or settled amicably	Total
1927	46	27	19	46
1928	65	31	22	53
1929	52	23	31	54
1930	77	30	44	74
1931	70	24	40	64
1932	93	42	41	83
1933	77	32	44	76
1934	86	38	62	100
1935	82	34	45	79
1936	102	45	49	94
Total	750	326	397	723

[1] Communication to the I.L.O.

4. Summary

The judicial machinery in existence in Norway for the settlement of labour disputes consists of a Boycott Court composed of a chairman, a vice-chairman and three members, and of a Labour Court composed of one chairman and six members appointed by the Crown. Four of the members of the Labour Court are appointed on the recommendation of employers' and workers' organisations in the proportion of two members for each group.

The Boycott Court has exclusive competence in all matters pertaining to boycotts, and the Labour Court has exclusive competence in individual or collective disputes arising out of a breach of a collective agreement or an unlawful stoppage of work, or in differences concerning the validity, interpretation or existence of a collective agreement, or any claim based on a collective agreement. No strike or lock-out may be declared without the authorisation of the Court. The jurisdiction of either of these Courts may nevertheless be excluded by an arbitration agreement.

The procedure is governed by special rules laid down in the Labour Disputes Act, 1927.

Appeals against the decisions of the Boycott Court and of the Labour Court may be lodged before the Supreme Court, but only in regard to certain decisions relating either to the admissibility of a complaint or the payment of costs or of a fine for contempt of court or failure to appear, or again when the Court has made an award in a case which does not fall under its jurisdiction.

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PERU

1. Introduction

In Peru industrial conditions have been such that until quite recently it had not been found necessary or advantageous to set up special machinery for the settlement of individual labour disputes. An Act dated 7 February 1924 [1] relating to contracts of employment provided for the setting up of temporary arbitration boards for the settlement of disputes connected with the application of the Act. It stipulated that each such arbitration board should consist of three members, one nominated by the employer, one nominated by the employee or

[1] *L.S.*, 1924, Peru 1.

employees and the third, representing the Government, appointed in Lima by the Ministry of Development and elsewhere by the political authority of the province. All disputes which came within their jurisdiction were to be settled within thirty days from the time they were submitted to the boards, whose decisions were final.

The above Act was supplemented by another Act of 15 June 1925[1] which contained among other matters a provision that the arbitration board could enforce its decisions by compulsory execution procedure. This obviously attributed to the arbitration boards quasi-judicial powers in each particular case. But the shortcomings of an arbitration system comprising temporary boards formed on each occasion by members the majority of whom discharged their duties, not as impartial judges or arbitrators, but rather as special representatives of the parties by whom they were appointed, were soon apparent and the need for further improvement found concrete expression in the Labour Courts Act of 12 April 1930[2], which is described below.

But the Labour Courts Act does not affect the conciliation and arbitration procedure for the adjustment of labour disputes as provided for in the Orders of 6 and 27 March 1920, 9 April 1920, 14 September 1920, and 18 June 1921, the provisions of which have already been described in a previous study published by the International Labour Office[3]. Various amendments have since been adopted, but as this monograph is primarily concerned with judicial procedure in connection with individual disputes, only a mere reference can be made to the various decrees affecting conciliation and arbitration[4]. It is necessary to mention in particular the more recent Decree of 23 March 1936[5] which introduces certain changes in the legislation on conciliation and arbitration adopted in 1920. One part of the Decree relates to individual disputes and provides for the intervention of the Department of Labour to safeguard the rights of the individual worker who wishes to submit a dispute concerning the payment of wages or wrongful dismissal to conciliation and arbitration procedure.

2. The System in Force

The Labour Courts Act of 12 April 1930, which provides for the establishment of labour courts in Lima and Callao for the judicial settlement of certain individual labour disputes, does not specifically repeal those parts of the previous Acts which concerned the establishment of arbitral boards. However, their abrogation may be implied from the context of the Act, particularly from the provisions which transfer the matters within the competence of the arbitration boards to the jurisdiction of the labour courts in Lima and Callao and in the other parts of the country to the ordinary courts of law.

Constitution and Composition of the Courts. — Attention must be drawn to the fact that under that Act labour courts are to be established

[1] *L.S.*, 1925, Peru 1.

[2] *L.S.*, 1930, Peru 1.

[3] *Freedom of Association*, Vol. V, pp. 223 *et seq.*

[4] Cf. *El Peruano*, 1925, No. 73, p. 321; 1928, No. 117, p. 549, and 1934, No. 4, p. 143.

[5] *Boletin del Trabajo*, Peru, 1st and 2nd semester, 1936, No. 1, pp. 5 *et seq.*

only in Lima[1] and Callao, which are the most important industrial centres in Peru. These labour courts are composed of a single member known as a labour judge. The labour judge is appointed in the same manner as a judge of first instance. He must have the same qualifications as the latter and also has the same rights and obligations. The clerks of the labour courts are appointed by the Superior Court of Lima. The expenses involved in the operation of the labour tribunals are borne by the State.

Competence of the Courts. — The labour courts are competent to decide all claims which arise out of industrial accidents and those which are based on the rights granted to commercial employees, also referred to as salaried employees, by the aforementioned two Acts of 7 February 1924 and 15 June 1925 concerning contracts of employment and by the Labour Courts Act itself. To enumerate here these various rights would be outside the scope of the present study. It may suffice to point out that these various Acts were intended to confer certain advantages on commercial employees, particularly with regard to the compensation they should receive in case of wrongful dismissal. For instance, the 1924 Act lays down the various rates of compensation to be paid to commercial employees in case of dismissal and the 1925 Act adds that such employees shall not necessarily be deprived of their right to compensation by reason of the fact that they share in the profits of the business in which they are employed. This will depend upon the rules of the establishment or the terms of the contract of employment, and here questions of interpretation may arise for the labour courts to decide.

Other rights are granted by the above-mentioned 1924 Act to commercial employees in case of illness or to their relatives in case of death. The last section of that Act extends the benefits of its provisions to women and young persons, without prejudice to the benefits conferred upon them by the Act of 25 November 1918 respecting the employment of women and young persons[2]. The reader may be referred to these various Acts. In all cases the rights accorded by the various laws cannot be denounced and any agreement to the contrary is null and void.

The Labour Courts Act provides that in the districts where there are no special labour tribunals, that is, outside the districts of Lima and Callao, disputes which ordinarily would be within the competence of the labour courts fall within the jurisdiction of the ordinary courts of law.

The Parties and their Representatives. — In view of what has been said above upon the competence of the labour tribunals, it would seem that the only persons who may lodge a claim before these special courts are commercial or salaried employees, women, young persons, and their relatives and also the victims of industrial accidents. The action may be brought by them personally or through a representative. The intervention of a counsel, although permissible, is not compulsory.

Moreover, two recent Decrees of 10 July 1935 and 6 December 1935 provide for the establishment of a legal section in the Department of

[1] An Act (No. 8084) of 21 March 1935 provides specifically for the setting up of a labour court at Lima in accordance with the provisions of the enabling Act of 12 April 1930. Cf. *Industria Peruana*, May 1935, No. 5, p. 212.

[2] *L.S.*, 1919, Peru 1 ; *Bulletin of the International Labour Office* (Basle), Vol. XIV, 1919, p. 186.

Labour to advise the workers and represent them free of charge in actions before the courts [1].

It is interesting to note that under the 1930 Act persons employed by the hour in commercial establishments are not included among commercial or salaried employees unless they are employed for not less than four hours per day or, if they are accountants, for not less than three hours per day in the same establishment or undertaking. These restrictions do not apply to newspaper undertakings, where much of the work must be done outside the premises.

Procedure

The proceedings before the labour courts are governed by the relevant provisions of the Judicature Act relating to the procedure in the ordinary civil courts and by a few special rules contained in the Labour Courts Act itself and those laid down in an Act (No. 5066) dated 5 March 1925 which dealt with claims brought by commercial employees before arbitration boards.

It may also be assumed that disputes coming within the jurisdiction of a labour court as well as those which are submitted to arbitration may likewise give rise to the intervention of the Department of Labour in accordance with the provisions of the above-mentioned Decree of 23 March 1936, the general terms of which would seem to replace the provisions of the Decrees of 27 April 1928, 6 November 1930 and 28 September 1933 on the same subject.

Under the Labour Courts Act a peremptory time-limit of eight days is given for the production of evidence, after which the judge must within three days render a decision. After he has received notification of the decision the party concerned has only three days in which to lodge an appeal. The appeal is dealt with by the ordinary courts of law discharging the functions of a court of review. Here again the time-limit for handing down the decision is three days only. No further appeal is allowed. This procedure obviously offers the possibility of a much more prompt settlement of a dispute than was the case under the system of the temporary arbitration boards.

In view of the short period of time during which the judicial labour system has been in operation in Peru, no statistics are as yet available to show the results obtained.

3. Summary

In Peru the judicial system for the settlement of individual labour disputes comprises only the labour court set up in the district of Lima in accordance with the Decree of 21 March 1935.

This labour court is composed of a single judge and is competent to hear cases relating to industrial accidents or to claims based on the rights granted to commercial or salaried employees, women and young persons, by the Acts of 7 February 1924 and 15 June 1925 concerning contracts of employment and by the Labour Courts Act of 12 April 1930. The rights there accorded concern mainly the compensation due in case of dismissal.

The rules of procedure laid down in the Labour Courts Act allow very short time-limits between the various stages of the proceedings. Appeals against the judgments of the labour courts are lodged before the ordinary courts of law, which then discharge the functions of courts of review.

[1] Cf. *Industria Peruana*, August 1935, p. 321, and January 1936, p. 14.

POLAND

1. Introduction

For some years after the independence of Poland was recognised by the Treaties of Peace of 1919, labour disputes in that country were handled in part by the ordinary courts of law and in part by the various systems of conciliation and arbitration boards [1], and of industrial and commercial courts, based on the laws which had prevailed in the countries under whose rule Poland had been for years past.

In that part of the Polish Republic which had formerly been under the dominion of Germany, commercial and industrial courts established in accordance with the German laws of 1890 and 1904 were resorted to for the settlement of labour disputes between certain categories of employers and employees. In the section which once formed part of Austria the labour tribunals in existence were modelled on the Austrian Law of 1896. But as no special labour courts had existed in the former Russian territory, labour disputes in those areas were adjudicated upon like other legal disputes by the ordinary courts of law.

The diversity of laws, the absence of labour courts and the fact that the laws which had come from other countries were obsolete, brought about the need for the promulgation of the Presidential Order of 22 March 1928 [2]. It must, however, be added that individual labour disputes arising in agricultural and forestry undertakings had been dealt with since 1919 and are still dealt with by the arbitration boards set up under the Law of 1 August 1919.

The Presidential Order of 1928 provided for the establishment of a system of labour courts having compulsory jurisdiction over individual labour disputes in all parts of the country except the areas which had previously been part of Germany. The new regulations empowered the special labour tribunals to take cognisance not only of civil cases but also of penal actions. Under certain conditions appeals against the decisions of the local labour courts could be lodged by successive stages before the regional courts and the Supreme Court. But the jurisdiction of the labour courts could be excluded under any circumstances by an agreement between the parties to submit the dispute to the decision of an arbitration board.

The Presidential Order of 1928 remained in force until 1934, when it was replaced by new legislation based on the experience acquired during the few years that the Order was in operation.

2. The System in Force

The Legislative Decree of 24 October 1934 [3] on the labour courts, which came into effect on 1 January 1935, repealed the Order of 1928 on the labour courts, but re-introduced the greater part of its provisions relating to the constitution and composition of the courts. It effected

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[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 329 *et seq.*

[2] *L.S.*, 1928, Pol. 5.

[3] *L.S.*, 1934, Pol. 3.

certain changes in the rules governing the proceedings and in particular specified that a settlement by conciliation before a conciliation committee composed of two assessors should be attempted before a judgment was rendered. While it did away with jurisdiction in penal cases, which henceforth fall within the jurisdiction of the labour inspectors, it extended the competence of the courts to other classes of disputes. The procedure for appeals was also simplified, And to ensure uniformity of the judicial labour system the industrial and commercial courts still operating under the German law of 1890 were to be replaced by the regular labour courts. Such was the purpose of the Decree of 2 July 1936 which came into force on 1 October 1936 and created eight new labour courts. The system now in force in the entire country may be briefly described under the following headings.

Constitution and Composition of the Courts. — In Poland the labour courts are established by a joint Order of the Minister of Justice and the Minister of Labour and Social Welfare in agreement with the Minister of the Interior, the Minister of Finance, the Minister of Agriculture and the Minister of Industry and Commerce. The Order which provides for the establishment of a labour court must also define its district, which may comprise one or more communes or only a portion of a commune. Where it is not desirable to have a labour court separate from the district court, a labour court is established in connection with the district court by the Minister of Justice and the Minister of Labour and Social Welfare.

The local labour courts are composed of a chairman, one or more vice-chairmen, and not less than ten assessors and twice as many substitutes from the two groups of employers and of workers. The chairman and vice-chairmen are appointed by the Minister of Justice from among judges of ordinary courts of law and are remunerated on the same basis as the judges.

The assessors, chosen half from among the employers' group and half from among the workers' group, are appointed for a term of three years by the Minister of Justice, on the joint recommendation of the Minister of Labour and Social Welfare and the Minister of Industry and Commerce or the Minister of Agriculture, from lists of candidates furnished by the chambers of industry and commerce, and agriculture, or by industrial associations of employers or of employees operating within the area of the labour court, and also from lists submitted by the managements of undertakings and institutions of the State and local authorities situated within a certain area. When such collective bodies do not exist within the area of the court, the responsible Ministers make the appointments at their own discretion.

In certain appeals, mentioned below, against decisions of the local labour courts one assessor and one substitute for each of the employers' and workers' groups are appointed to the regional courts of law by the authorities which appoint the assessors for the labour courts of first instance or on their authorisation by the presidents of these regional courts from the lists mentioned above.

The Decree stipulates that, among other qualifications, assessors and their substitutes must be Polish citizens who are in full possession of their civic rights and have attained the age of thirty years. Soldiers on active service, clergymen or members of a religious order, State officials, members of the Diet or senators cannot act as assessors. Refusal to accept the post of assessor or substitute, or resignation

from such office is permitted when the persons concerned are past sixty years of age, are physically or mentally unfit for the task, or again under specified conditions which are left to the appreciation of the Minister of Justice.

Assessors and substitutes must take an oath to judge without bias and in conformity with the principles of law and equity. Negligence in the discharge of their functions may be punished by a fine not exceeding 500 zloty imposed by the chairman of the court to which they are attached. The assessor may within fourteen days lodge an appeal against the imposition of this fine before a special tribunal composed of the chairman of the labour court or of the regional court and of four assessors, that is, two from each group. When the amount of the fine is not recoverable a sentence of imprisonment not to exceed two weeks may be inflicted.

No remuneration is paid to assessors and substitutes, but on application they may receive an indemnity for their attendance at sessions of the labour courts provided that they can show a loss of earnings occasioned thereby, and travelling expenses are paid to those who reside in a different locality from that in which the court is established.

The regional court may remove an assessor or his substitute from office if it is proved that he has ceased to have the qualifications mentioned above, or has been guilty of a serious breach of duty or if he is no longer qualified to represent the group from which he was appointed.

The salary of the labour judges and the other expenses incurred in the operation of the labour courts are borne by the State.

Competence of the Courts. — Under the 1934 Decree the labour courts are given compulsory jurisdiction over individual labour disputes. They are competent to settle all disputes between employers and employees or between employees among themselves when the sum at issue does not exceed 10,000 zloty and the dispute arises out of:

(1) a contract of employment;
(2) a contract for work done outside the workplace, which includes home work;
(3) a contract of apprenticeship;
(4) common employment;
(5) membership in social or other insurance institutions, in so far as disputes of this nature are not reserved by law or by special regulations for settlement by special tribunals in these institutions, by the administrative authorities or by arbitration agencies.

The labour courts are also competent to deal with disputes based on the contracts of teachers who are engaged to teach outside school establishments, and with justiciable disputes relating to lodgings which belong to the proprietors of the works or mines or which form part of the wage earners' remuneration. But they are not competent in disputes based on the contracts of intellectual workers employed in Government offices and in the State or municipal schools. Nor are they competent in regard to workers and improvers engaged in undertakings in agriculture, forestry and horticulture, or in establishments connected therewith which are not mainly industrial or commercial in character and are situated outside the towns.

The 1934 Decree, like the Order of 1928, stipulates that when jurisdiction is given by decree to the labour courts in respect of disputes affecting the employment relations of workers and improvers engaged in undertakings in agriculture, forestry and horticulture, then the conciliation and arbitration procedure provided for in the Act of 1 August 1919 [1] for the settlement of labour disputes between employers and employees in agriculture will be abrogated accordingly. But for the time being individual labour disputes in agriculture are excluded from the jurisdiction of the labour courts. Collective disputes are also within the competence of special arbitration boards provided for by the Decree of 27 October 1933 [2]. Moreover the parties may by agreement submit a dispute already in existence and falling within the competence of the labour courts to the jurisdiction of some conciliation or arbitration board set up by collective agreement. But no agreement of the parties will confer on the ordinary courts of law jurisdiction over matters which fall within the jurisdiction of the labour courts.

In the localities where there are no labour courts, labour disputes fall within the competence of the ordinary courts of law. When the amount at issue does not exceed 5,000 zloty the ordinary district courts are competent, subject to the observance of the relevant provisions of the Labour Courts Decree of 1934 with respect to exemption from stamp duty, the representation of the parties and the territorial competence of the labour courts.

As regards the *forum* of the action, it is laid down that the plaintiff may bring his complaint either before the labour court in the area of which the work was or would have been performed, or before the court in the area of which was situated the undertaking or the head establishment, or again before the tribunal which has jurisdiction over the defendant.

The Parties and their Representatives. — Several complainants may join in the same action regardless of the total amount at issue. In such a case, assuming that the causes of action are the same, several disputes may be settled for approximately the cost of one action.

The parties may appear either in person or through a representative. In actions before the labour courts of first instance and the regional courts, representation may be effected through : *(a)* a relative such as the father, mother, husband or wife, brother, sister or child ; *(b)* an agent of the occupational organisation to which the party belongs ; *(c)* the advocate who acts as permanent legal adviser for the employer or organisation to which the party belongs ; and *(d)*, in the case of an employer, through his manager or salaried employee. The Court must give all necessary indications as to procedure to the party who is not represented by an advocate. In appeals before the Supreme Court the parties must always be represented by advocates.

It is also stipulated that a right of action governed by the Decree may be assigned to a third party, who may start a suit before the labour courts under the same conditions as if he were the original party to the dispute.

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 325 *et seq.*, and also *L.S.*, 1932, Pol. 4.

[2] Cf. *I.L.O. Year-Book*, 1933, p. 330.

Procedure

Ordinarily the labour courts sit in chambers composed of the judge as chairman, and of one assessor or his substitute from each of the employers' and workers' groups. The choice of the worker's assessor depends on whether the party to the action is engaged in intellectual or manual work. It is the chairman's duty to convene the assessors, and all orders or decisions of a purely administrative or disciplinary character are given by the chairman alone.

An assessor or his substitute may be challenged whenever there are sufficient reasons to believe that he would not judge with impartiality.

Preliminary Proceedings. — The parties must be given at least three days' notice to appear at the first hearing, which must be held not later than two weeks after the complaint was lodged. When the chairman of the labour court is of opinion that the matter could be adjusted by agreement between the parties, he refers it to a conciliation committee composed of the parties and two assessors, representing respectively the employers' and workers' groups. He also designates one of the assessors as chairman of the conciliation committee. If the parties fail to agree immediately, the assessors, who on this occasion are not entitled to call upon witnesses and experts, may suggest different solutions and adjourn the sitting for a week.

Conciliation must proceed from the unanimous agreement of the members of the committee. The agreement acquires the force of law from the moment it is signed by the parties and the assessors.

The Trial. — When conciliation has failed the dispute is dealt with by judicial procedure before the court sitting in chambers. At this stage witnesses and experts may be examined by the assessors and by the chairman, who decides upon the admissibility of the evidence. The court may also come to the conclusion that it has no jurisdiction in the matter and refer the case to the competent court in accordance with the rules which apply to the procedure before the ordinary courts of law.

Judgment and Execution. — The decisions of the labour courts must within eight days be put in writing and give the reasons on which they are based, if a demand to that effect is made by one of the parties within three days from the time the judgment is delivered. Otherwise the judgment acquires executionary force from the moment it is delivered, subject to a deposit of security by the plaintiff if the court requires it, when the sum involved does not exceed 300 zloty and an appeal could only be lodged on certain grounds before a regional court composed of three judges as indicated below. In other cases it is only an appeal against the State Treasury and State undertakings that does not effect a stay of execution.

Appeals. — A special tribunal, consisting of the regional court composed of three judges, decides appeals against decisions of the labour courts when the sum involved does not exceed 300 zloty and the grounds adduced are that the judgment *(a)* was given under such conditions as to render it invalid ; *(b)* exceeds the competence of the courts ; or *(c)* violates the law.

In all other cases the decisions of the labour courts may be contested before the regional court composed of a judge as chairman and two assessors, provided the amount at issue exceeds 300 zloty. In that event recourse to the Supreme Court is also allowed.

3. Results

During the few years which have elapsed since the institution in Poland of a uniform labour judiciary great efforts have been made to educate the 1,000 assessors and their 2,000 substitutes who form part of the existing twenty-four labour courts for the task of discharging functions which often require special knowledge. In consequence the employers' and workers' organisations have endeavoured to educate those who are chosen from among their members to represent them on the labour courts.

As long as five years ago, a permanent organisation called " Association of the Friends of the Labour Courts " was formed, with a membership recruited independently of political affiliations from among assessors and persons connected with the labour courts. This Association organises gatherings and lectures for the benefit of its members and publishes special handbooks for the use of assessors. There can be no doubt that the Association contributes to a large extent in raising the standard of work of the assessors and in improving their lot when called upon to sit in labour appeals before the ordinary appeal courts, and in a general way facilitates the work of the labour judiciary.

Some idea of the useful work done by the labour courts may be formed by examination of the following table I [1] which shows, for each year since the passing of the unifying law on the labour courts, the number of labour courts which have been set up in industrial centres, and the number of cases they have handled.

TABLE 1

Year	Number of labour courts	Number of civil actions brought before the labour courts	Number of cases settled
1929	16	24,299	19,236
1930	16	24,807	26,134
1931	16	25,322	24,926
1932	17	20,355	21,322
1933	18	16,938	17,636
1934 [1]	16	15,532	15,044
1935	16	19,160	18,655
1936	24	22,875	21,579

[1] Cf. *Concise Statistical Year-Book of Poland*, 1936.

It will be observed that while additional labour courts have been established, the number of complaints lodged before them has decreased. The inference to be drawn is that labour disputes have diminished as a result of the stabilising effect which the decisions of the labour courts have had on employment relations. Where in certain years the number of cases settled is greater than the number of actions brought before the courts, the explanation is obviously that some of the cases which had been carried over from the previous year have been successfully settled.

[1] Statistics furnished by *Statystyka Pracy*, a quarterly published by the Central Bureau of Statistics of the Polish Republic. See year 1933, pp. 142 *et seq.* and year 1934, pp. 61 *et seq.*

The statistics furnished by the greater part of the labour courts to the Ministry of Labour and Social Welfare show that a very small percentage of the complaints are lodged by employers. The figures available give 4.6 per cent. for 1929 ; 3.9 per cent. for 1930 ; 3.5 per cent. for 1931 ; 4.6 per cent. for 1932 ; 6.3 per cent. for 1933.

As regards the complaints lodged by the workers, it is interesting to note the proportion between the number of claims made by the various categories. The following table II gives the percentage obtained on the basis of the statistics furnished by certain labour courts.

TABLE II

Year	Percentage of claims by categories of workers					
	Intellectual workers	Manual workers	Home workers	Concierges	Domestic servants	Apprentices
1929	16.8	65.4	0.7	5.0	10.7	1.4
1930	19.5	64.5	0.9	4.3	9.8	1.0
1931	23.3	59.3	0.7	4.7	11.0	1.0
1932	24.6	56.5	0.8	5.1	12.2	0.8
1933	22.2	54.2	0.9	6.9	14.7	1.1

Some of the labour courts have also established statistics showing the number of cases which were settled by agreement between the parties as a result of the conciliation proceedings initiated under the auspices of the labour courts. The resulting averages come to the following figures : 1929, 15 per cent. of the claims ; 1930, 14.7 per cent. ; 1931, 14.9 per cent. ; 1932, 16.2 per cent. ; 1933, 15.8 per cent. That such a large proportion of the disputes can be adjusted by amicable agreement fully justifies the existence of the provisions which require that conciliation efforts should be made before a judicial decision is handed down by the labour courts.

Moreover, the fact that such a large proportion of the decisions of the labour courts appealed from have been sustained by the appeal tribunals testifies to the practical value of the decisions of courts, which include among their members representatives of the employers' and workers' groups to which the parties belong. The statistics on this point are contained in the following table III :

TABLE III

Year	Number of appeals lodged	Number of appeals dismissed
1929	827	510
1930	2,880	1,465
1931	2,967	2,213
1932	2,964	2,215
1933	2,729	2,087
1934	1,838	1,918
1935	2,014	3,863
1936	2,657	5,948

4. Summary

The judicial labour system at present in force in Poland consists of a network of labour courts set up either separately or in connection with the local court of law. They are composed of a chairman and one or more vice-chairmen who must be judges appointed by the Minister of Justice, and of not less than ten assessors and twice as many substitutes chosen in equal numbers from the employers' and workers' groups. The assessors are appointed for a term of three years by the competent Ministries from lists drawn up by the respective employers' and workers' representative chambers and occupational organisations.

The jurisdiction of the labour courts extends to practically all individual labour disputes arising out of employment relations between employers and employees or between employees among themselves. It supersedes the powers of conciliation and arbitration boards unless they have been set up by collective agreement.

The 1934 Decree on the labour courts contains detailed rules concerning the representation of the parties and the various stages of the proceedings for the adjustment of disputes by either conciliation or judicial procedure.

Appeals against the decisions of the labour courts may be lodged before the regional courts of law. When the amount involved does not exceed 300 zloty, the regional courts are composed of three judges, and the appeal is only allowed under certain conditions. When the sum at issue exceeds 300 zloty the appeal is always allowed and then the regional courts are composed of a judge and one assessor from each of the employers' and workers' groups. In that case a further appeal may also be brought before the Supreme Court.

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PORTUGAL

1. Introduction

In Portugal the adjustment of labour disputes has for many years been given the special attention of the legislator. Some writers even affirm that as early as the sixteenth century labour judges were appointed in connection with the ordinary courts of law [1]. But special labour tribunals were not known before the latter part of the nineteenth century. Their establishment had then become a matter of urgency on account of the numerous labour disputes which accompanied economic developments in Portugal at that time.

The first legislative measure on the subject was the Arbitration Courts Act of 14 August 1889, which was subsequently modified and improved upon by various legislative decrees, in particular those of 19 March 1891, 14 April 1894, 12 October 1928 and 29 April 1929. The Act provided for the constitution of electoral bodies of employers and workers for the nomination of the members of the arbitration courts, which comprised a president and two vice-presidents appointed by the Government on the recommendation of the municipal authorities concerned, and from eight to sixteen members elected in equal numbers by the respective electoral groups of employers and workers. The separate labour tribunals were competent to deal with individual labour disputes which arose in industry and commerce between employers and their wage-earning or salaried employees or between the employees of the same employer among themselves. They were also empowered to inflict disciplinary sanctions on employers or employees who failed to observe the usual principles of equity and respect in their relations to one another.

The arbitration courts were not entitled to render a binding decision until an attempt had first been made to adjust the dispute by agreement between the parties. Moreover, conciliation could be resorted to at any stage of the proceedings. Failing conciliation the matter was settled by a judgment subject to appeal in the first instance to the ordinary Court of Appeal and in the last resort to the High Court of Justice. But an appeal did not lie unless it involved some question affecting the competence of the arbitration court.

[1] Gonçalves, Luis da Cunha: *A Evoluçao do Movimento Operario em Portugal.*

The Legislative Decree of 24 July 1913, as it introduced into Portuguese social legislation the principle of the employer's liability based on the occupational risk, also provided for the institution of special arbitration boards to determine the compensation due in all cases of industrial accidents. These boards were originally composed of four representatives of employers and four representatives of workers elected by their respective organisations, and of one medical assessor and one representative of the insurance companies. For the districts of Lisbon and Porto the number of members of the boards was larger. This Decree was amended from time to time. Provision was subsequently made for the appointment of a technical assessor to assist the presiding officer of the board. A Decree of 9 March 1918 gave those boards the official title of Industrial Accidents Boards. The Decree of 10 May 1930 required the labour courts to be composed of a judge appointed by the Government and two assessors elected respectively by the employers' and workers' groups. A medical officer and a representative of insurance companies were still attached to the labour courts. In all cases conciliation procedure was a prerequisite to a judicial settlement.

Collective labour disputes were not excluded from the competence of the arbitration courts. Little use, however, seems to have been made of these tribunals for the adjustment of those disputes. This explains the need which was felt in Portugal at the beginning of this century for the institution of special bodies to deal with strikes, lock-outs and other collective disputes. To this end an Order was issued on 17 August 1912 containing provisions for the constitution of Conciliation Boards, which were given the necessary powers to adjust either collective or individual labour disputes. A description of these Conciliation Boards has already been in given the study on Conciliation and Arbitration in Portugal published by the International Labour Office in 1933 [1]. Reference was there made to the changes which would probably be effected in the machinery for the solution of labour conflicts as a result of the new Portuguese Constitution, which came into force on 11 April 1933, declaring among other things that labour disputes would come within the purview of special courts. In pursuance thereof various legislative measures were taken, the main one being the Legislative Decree of 15 August 1934 [2], which laid down the prescriptions for the creation of special labour courts to judge individual as well as collective labour disputes and repealed all previous Acts and Decrees on the subject.

2. The System in Force

The new legislation on the labour tribunals contains a mass of details relating to the working of the labour courts and to the duties of the public prosecutor, who is entrusted with special functions in connection with the labour courts. Certain provisions impose definite duties upon hospitals. For instance, in the case of industrial accidents, the hospital to which the injured person is taken, or even the employer to whose care the injured person is entrusted, is required to inform the labour court if the victim should die and state whether or not a post-mortem examination has been made. Other stipulations make

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 477 *et seq.*

[2] *L.S.*, 1934, Por. 3.

it compulsory for the person responsible for the work when the accident occurred to provide the injured person with first-aid medicaments and pharmaceutical requisites and transport to the nearest casualty station. These and similar provisions do not, however, fall within the scope of this monograph, which purports to give only an outline of the Portuguese system for the judicial settlement of collective and individual labour disputes.

Constitution and Composition of the Courts. — The 1934 Decree on the labour courts provides for the establishment by Government Order of a labour court in the chief town of every administrative district of Portugal and in Funchal. Each labour court must be composed of a judge, an official of the public prosecutor's department, a clerk and an official to serve summonses. The labour court of Lisbon is divided into three chambers and that of Porto into two chambers, each chamber being constituted on the same principle as the separate labour courts. The districts of the labour courts are not necessarily coterminous with the ordinary judicial districts.

In case of absence or of incapacity to discharge their functions, the labour judges replace each other in Lisbon and Porto, and in other parts of the country they are replaced by the civil registrar or land registrar of the district. The officials of the National Labour Institute and of the public prosecutor's department also replace each other in their respective capacity. The labour courts must sit not less than once a week.

Competence of the Courts. — An interesting feature of the new labour judiciary in Portugal is that in certain cases the special tribunals must discharge their functions *ex officio* in accordance with the rules contained in the Decree ; in other cases they intervene only at the request of one of the parties to the dispute. A somewhat novel provision stipulates that the decisions of the labour courts shall be made in accordance with the principles of strict law when their intervention is made *ex officio*, and on grounds of equity when a party submits a case to the labour courts. It will not be possible to estimate the relative value of these different measures until the labour tribunals have been functioning for some considerable time.

The various matters to which the competence of the labour courts extends are enumerated in section 11 of the Decree as follows :

" 1. All questions which arise between corporate organisations or between a subordinate body of an organisation and the organisation itself or another organisation ;

" 2. All questions relating to the interpretation or performance of collective agreements or labour agreements (*acordos do trabalho*) concluded between employers, either singly or in groups, and the national trade unions, or between the latter, provided they are approved by the Under-Secretary of State for Corporations and Social Welfare ;

" 3. All questions arising out of industrial accidents ;

" 4. Legal disputes affecting mutual benefit societies and provident funds ;

" 5. Legal disputes affecting corporative provident organisations ;

" 6. Disputes relating to hours of work and in a general way questions relating to the compulsory provisions regulating the conditions of employment ;

"7. All disputes arising out of the regulations of corporative organisations whether approved by the Government or not, and for the settlement or interpretation of which the intervention of the courts is requested;

"8. The interpretation of collective agreements and labour agreements [1], the application, amendment, prorogation and adaptation thereof to supplement changes in economic conditions and even the conclusion of new such agreements;

"9. All questions relating to arbitration between trade unions and all other questions which in view of their character require to be submitted to arbitration if the parties agree to the intervention of the courts or which are referred for settlement to the courts by a decision of the Under-Secretary of Corporations and Social Welfare;

"10. Conciliation in all disputes within their competence;

"11. Disputes arising out of individual contracts of employment when the sum involved does not exceed 50,000 escudos in Lisbon and Porto and 5,000 escudos in the other districts;

"12. Similar disputes in which the principles of strict law are not applied;

"13. The revision of awards and other decisions under the conditions allowed by positive law;

"14. The carrying out of decisions issued with respect to costs and fines and the other decisions issued in accordance with this Decree."

The Decree lays down that the labour courts must exercise their jurisdiction *ex officio* in the cases coming under the above paragraphs 1 to 8, and at the request of one of the parties to the dispute in the other cases.

It is specified that a contract of apprenticeship or for domestic work or for employment in industry or in agriculture may be deemed an individual contract of employment.

The labour courts may also receive complaints and inflict disciplinary measures on employers or employees "for failure to observe the principles of equity, courtesy, respect and obedience on which their relations to each other should be based". When the facts are sufficiently serious to warrant the intervention of the police authorities the latter must be notified by the official of the public prosecutor's department.

As a rule disputes are handled by the labour court of the district where the work is performed. But there are many exceptions to this principle. For instance, disputes relating to services performed in the colonies where there is no labour tribunal are dealt with by the labour court for the district of Lisbon. Or again, if several defendants residing in different districts are involved in the same action, the proceedings are instituted in the court of the place of domicile of the majority of the defendants and if there is an equal number of persons domiciled in the different places, then the plaintiff is entitled to choose the court at any such place of domicile. When a dispute arises

[1] For the purposes of the Decree labour agreements *(acordos do trabalho)* mean special arrangements concluded between one or more employers and a national trade union and approved by the competent authorities.

between the employees of the same employer the competent court is the labour court of the place of domicile of the defendants. In the case of an action brought against an alien, on the ground that the action is based on a fact which occurred in Portugal or that the defendant is under an obligation to a Portuguese, the proceedings may under certain conditions be instituted before the court of the place of domicile or residence for the time being of the person bringing the action. Labour disputes which do not fall under the jurisdiction of the labour tribunals are decided by the ordinary courts of law.

The Parties and their Representatives. — The disputes coming within the jurisdiction of the labour tribunals may be not only between employers and their employees but also between the employees of the same employer among themselves, whether they are Portuguese nationals or aliens.

In principle the parties should appear in person before the courts. But for certain disputes arising out of individual contracts of employment, the defendants may be represented by a member of their family, who must show proper authorisation. The heads of industrial or commercial undertakings may cause themselves to be represented by the director, manager or a salaried employee of the establishment.

Young persons who cannot be represented by their parents or guardians may be represented by an official of the public prosecutor's department. Women under eighteen years of age may not sue or be sued before the labour courts unless they are accompanied by their legal representatives or are assisted by an official of the public prosecutor's department.

The Decree specifies that the intervention of barristers and solicitors is only permitted in the case of disputes based on industrial accidents or social legislation, when the amount involved is greater than 5,000 escudos, and also in appeal proceedings. Elsewhere than in Lisbon and Porto it is permitted in disputes arising out of individual contracts of employment in which the sum involved exceeds 1,000 escudos.

Procedure

The proceedings before the labour courts are governed by detailed rules laid down in the Legislative Decree of 15 August 1934. It exempts from stamp duty the various documents pertaining to actions before the courts. It gives the various time-limits that are applicable to the different classes of actions. It even contains special regulations with regard to the registration of provisional mortgages on the property of a person guilty of a contravention which exposes him to the payment of a fine, or on the property of a party to an action who has not tendered the security required by law. From considerations of space only the principal features of the system can be given here.

Preliminary Proceedings. — The action is begun by a complaint in writing addressed by the plaintiff to the president of the court, giving all the necessary particulars of the case. Once the parties have been convened before the court an attempt must first of all be made by the official of the public prosecutor's department on the labour tribunal to effect an adjustment of the dispute by conciliation. Only after an amicable settlement has proved impossible are judicial

proceedings begun. The parties may even appear voluntarily before the court with a view to arriving at a conciliation agreement. Conciliation plays a very important part in the proceedings. It may be undertaken at any time during the trial and even during the enforcement of a judicial decision rendered by the court. Any conciliation agreement arrived at in or out of court becomes enforceable from the time it receives the approval of the labour tribunal.

Another special feature of the Portuguese law is that when an industrial accident has occurred the employer concerned is compelled to notify the competent labour court within forty-eight hours after the accident. If the accident occurs during a voyage by vessel the time-limit is forty-eight hours after the arrival of the vessel in port. Failure to observe this prescription renders the employer liable to the payment of a fine which must be not less than 10 nor more than 100 escudos. Upon receipt of the notification the labour court must begin proceedings *ex officio*.

When a case of compensation has been settled by conciliation, any person concerned is entitled to apply to the competent labour court for a revision of the pension or compensation if there is a further change in the capacity for work of the injured person.

The Trial. — The proceedings before the court are sometimes entirely oral. This is the case in actions based on individual contracts of employment in which the amount involved is less than 1,000 escudos. The procedure is more summary when the amount of the claim is relatively small. The number of witnesses allowed also varies according to whether the claim does or does not exceed 5,000 escudos. Only five witnesses are admissible for each party in the first case and eight in the second. In Lisbon and Porto, when an action is for a sum exceeding 5,000 escudos alleged to be due in virtue of an individual contract of employment, the bench must be composed of the judge of the competent chamber and of the other labour judges, all of whom may deliberate in private before delivering the judgment.

In given circumstances the public prosecutor or his representative may intervene at the trial. If the dispute is one affecting the collective relations between employers and employees, the public prosecutor may propose to the persons concerned either on his own initiative, at the instance of the judge or the suggestion of the parties, the amendment, prolongation or revision of collective agreements and labour agreements which have been approved by the Under-Secretary of State for Corporations and Social Welfare and even the conclusion of new such agreements. The public prosecutor may in fact intervene or when necessary lodge an appeal in all cases in which the State has an interest or which affect the rights of persons who are under the unofficial protection of the public prosecutor's department.

Judgment and Execution. — The decisions of the labour courts are usually contained in a written instrument signed by the judge giving all the particulars of the case. Judgments of the labour courts are enforceable by the same means as judgments of the ordinary courts of law.

If the judgment is one relating to compensation in case of an industrial accident causing death or permanent incapacity, a copy of the judgment is transmitted within fifteen days by the clerk of the court to the Insurance Inspectorate. If this Inspectorate is unable to give effect to the judgment, it informs the court accordingly,

specifying the sums which should be deposited by the defendant, or the part of the defendant's property which should be assigned for the purposes of the distress to be carried out in execution of the judgment. Judgments which merely determine the amount to be paid in the way of hospital expenses or in similar cases are enforceable by special summary procedure.

Appeals. — The decisions of the labour courts are not final. An appeal for review on a point of law lies with the labour and social welfare division of the Supreme Administrative Court, which refers the case back for a new trial to the labour court concerned if it is found that there has been a misinterpretation or a misapplication of the existing law. An appeal may also be lodged before the same division for a new trial on the questions of fact and of law when the judgment of the labour court fixes the indemnity to be paid in a case of industrial accident which resulted in the death or total and permanent incapacity of the victim. The proceedings before the supreme administrative tribunal are governed in part by the special rules of procedure contained in the Decree on the labour courts and in part by those which are applicable for the ordinary administration of justice.

3. Results

No official statistics are as yet available to indicate the number of cases which have been settled each year since the new system of labour courts was instituted under the legislation of 1934. But it appears that the results achieved have surpassed all expectations. In a bimonthly official publication, the *Boletim do Instituto Nacional do Trabalho e Previdência,* important decisions handed down by the labour courts are given in detailed accounts comprising a summary of the principle of labour law applied in the case. This affords ample evidence of the importance attached to the legal precedents evolved by the new labour judiciary.

4. Summary

In Portugal the labour judiciary consists of a number of labour courts composed of a judge, an official of the public prosecutor's department, a clerk and person to serve summonses. In Lisbon and Porto the courts are divided respectively into three and two chambers, each of which is constituted in the same manner as a separate labour court.

The jurisdiction of the labour judiciary covers all collective and individual disputes arising out of employment relations between employers and employees or between employees of the same employer. The parties to a dispute must as a rule appear in person before the labour tribunals, but exceptionally they may be represented by subordinate officials or again, in very special cases, by attorneys-at-law.

The Legislative Decree of 15 August 1934 on the labour courts lays down detailed rules for the functioning of the labour tribunals. It authorises the intervention of the public prosecutor's department in labour disputes before the courts with a view particularly to facilitating the application, modification or renewal of collective agreements and labour agreements *(acordos do trabalho)*, and to safeguarding the interests of the State and of the persons who are under the unofficial protection of the public prosecutor.

Conciliation constitutes an essential element of the proceedings. It must be attempted before a judicial decision can be rendered and may be resorted to by the parties at any stage of the proceedings, even during the enforcement of an award.

The judgments of the labour courts are subject to appeal before the labour and welfare division of the Supreme Administrative Court, either by way of revision in compensation cases relating to industrial accidents or for annulment and a new trial in all other cases.

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RUMANIA

1. Introduction

Owing to the historical evolution of the Kingdom of Rumania and to its sudden aggrandisement in territory and in population at the end of the world war, there existed no uniform system for the adjustment of labour conflicts in the different Rumanian provinces until the promulgation on 15 February 1933 of the Labour Courts Act [1]. The Hungarian Industrial Code of 1884 was still in force in the Banat and in Transylvania, while the Austrian law of 1896 on industrial courts continued to apply in Bucovina. Different laws again were in operation in that part of the country which constituted the former Kingdom. Each of these different systems had its own merits and shortcomings.

The Hungarian law of 1884 provided for the setting up of a conciliation committee within each guild. These committees were composed of an equal number of elected employers' and workers' representatives, under the chairmanship of a delegate of the local administrative authorities. Their task was to settle disputes arising out of the contracts of employment between employers and their workmen or apprentices. The procedure followed was that agreed upon by the members of the committees. But the law required that in all disputes submitted to them an attempt must first be made to settle the matter by agreement between the parties. Failing conciliation, these committees could decide by a majority vote, the chairman having a casting vote in case of an equal division of the votes. The decision could be enforced by the local administrative authorities. In fact, the law also provided that these authorities could be resorted to directly for the settlement

[1] The Act is dated 14 February 1933. Cf. *L.S.*, 1933, Rum. 1.

of the dispute. In either case, the party who was dissatisfied with the decision could within eight days lodge an appeal before the ordinary courts. But the lodging of an appeal did not effect a stay of execution.

The administrative authorities of first instance were the rural councillors, the communal councils in the towns and the police authorities in the municipalities. Those of second instance were the assistant-sheriff in the districts and the municipal council in the municipalities. The administrative authorities of last resort were the Ministry of Labour for labour matters and the Ministry of Industry for questions affecting either industry or commerce. But the frequent changes in the administrations, as might be expected, were too often detrimental to this method of adjusting labour conflicts.

The Austrian law of 1896 provided for the creation of industrial courts composed of a professional judge as chairman and of four assessors, that is, two employers and two workers, appointed from lists drawn up respectively by representative bodies of employers and of workers. It may suffice to point out here that this law was put into operation in very limited spheres, such as Cernauti and certain small communes of Bucovina.

The Trades Act of 1912 contained provisions for the establishment of a judicial committee in connection with every guild in the provinces which constituted the Rumanian Kingdom of those days. Each committee was composed of a presiding judge appointed by the justice of the peace or the ordinary judicial tribunal, and of a representative of the employers and a representative of the craftsmen and workmen. Once a year each of these two groups elected six representatives from whom one was chosen by lot to serve for a term of three months.

The judicial committees were responsible for adjusting differences between the guild and the craftsmen or between the craftsmen and their respective employers, arising out of the exercise of their particular trades. The parties to a dispute were required to appear in person and for that reason the sittings were held in the evening. The first stage of the proceedings consisted in an attempt at conciliation. When no agreement could be reached a decision was rendered by a majority vote. Against this decision an appeal could be lodged before the justice of the peace or the ordinary court of law.

The difficulty under that system was that, after conciliation had failed, no decision could be handed down owing to the fact that very often the representatives appointed to the committee did not attend the sittings. In 1913 the Committees were replaced by conciliation commissions constituted on the same principle. But their only task was to endeavour to settle the dispute by agreement between the parties. When this was not possible the aggrieved party could bring his case before the justice of the peace, whose decision was subject to appeal to the ordinary court of law in special cases only. That however did not relieve the situation entirely, for the justices of the peace were already too preoccupied with their regular duties to give prompt attention to the appeals against the awards of the conciliation commissions.

It will be seen from the foregoing account that for some years the machinery for the settlement of labour disputes, apart from lack of uniformity, and apart also from the fact that it was non-existent in certain parts of the country, for instance, in Bessarabia, did not produce satisfactory results where it was put into operation. The urgency of the new legislation which is at the basis of the present system was self-evident.

2. The System in Force

The various laws on which rested the different systems for the settlement of individual labour disputes described above were all repealed by the Rumanian Labour Courts Act which came into force on 15 February 1933. The new Act did not however do away with the conciliation and arbitration procedure devised by the Act of 4 September 1920 for the regulation of collective labour disputes. This procedure has already been described in *Conciliation and Arbitration in Industrial Disputes* [1].

Nor did the Labour Courts Act of 1933 abrogate all the provisions of the Act of 10 April 1931 [2] to secure payment for work done. The latter Act provides for the setting up of an arbitration board in connection with every justice of the peace in the cities and for a board to be attached to every ordinary court of law. Each arbitration board is composed of a judge and two assessors, one chosen by the plaintiff and the other by the defendant. The functions of the arbitration boards were, among other matters, to settle disputes between craftsmen or persons engaged in small-scale industry and their salaried or wage-earning employees. Since 1933 such disputes now fall within the jurisdiction of the labour courts set up in virtue of the Labour Courts Act. But the Act specifies that all other disputes mentioned in the Act of 21 April 1931 shall be judged by the arbitration boards constituted in conformity with the provisions of the 1931 Act. Subject to the above-mentioned limitations, practically all individual labour disputes and the collective labour disputes specified below (in the section on the "Competence of the Courts") come within the jurisdiction of the labour courts described in the following pages.

Constitution of the Courts. — The Labour Courts Act of 1933 lays down that special labour tribunals of first instance shall be set up in connection with each chamber of labour for the purpose of settling by conciliation or judicial decision labour disputes relating to employment relations and also for the purpose of judging contraventions of the statutory provisions respecting the regulation, organisation and protection of employment, the handicrafts and health of the workers.

The chambers of labour are organisations for the representation and protection of labour in industry and commerce. The Act [3] by virtue of which they were created stipulates that the number of chambers of labour must not be less than the number of chambers of industry and commerce in the same localities. They may be established either at the request of the employers' or workers' trade associations in the region concerned or *ex officio*.

In the Labour Courts Act there is a provision to the effect that only one labour court may be established in one and the same town. But in Bucharest and in other centres where this may be necessary the labour courts are to be divided into two chambers, each of which will operate independently.

The labour courts are set up by Royal Decree based on a decision of the Council of Ministers and issued on the recommendation of the Ministry of Labour, Public Health and Social Welfare, in agreement with the Ministry of Justice. The Decree in question specifies the

[1] Cf. *Rumania*, pp. 500 *et seq.*

[2] *Monitorul Oficial*, 21 April 1931, No. 91, p. 3851.

[3] *L.S.*, 1927, Rum. 2.

place and area of jurisdiction of each court, which may be limited to a district or only to a part of a district or again to two or more districts constituting a region. Before setting up a court the Ministry of Labour must consult the competent chambers of commerce and industry, the chambers of labour and also the employers' and employees' occupational organisations in the district.

Each labour court occupies in the judiciary a rank equal to that of the courts of the justices of the peace and is placed under the direct supervision of the senior president or president of the ordinary court of law within whose jurisdiction the labour court is established.

Composition of the Courts. — The labour courts are composed of two judges and a certain number of assessors and substitutes. The judges are appointed for a term of three years by the Ministry of Justice at the request of the Ministry of Labour. The selection is made from a list of three law officers submitted by the senior president or by the president of the district court on the recommendation of the Ministry of Justice. To be eligible, the law officer must have the rank of judge with three years' seniority in that capacity. He is compelled to accept the appointment unless he can show good reasons why he should not be appointed, in which case the appointment is cancelled by the authorities responsible for making it. When a post falls vacant or a labour judge is on leave, he may be replaced provisionally on the authorisation of the senior president or president of the district court. Where the labour court is composed of two chambers the chairman is appointed in accordance with the provisions of the Judicature Act respecting the justices of the peace.

The assessors and substitutes are appointed for a period of three years by the Ministry of Labour from separate lists drawn up for employers, wage-earning employees and salaried employees, on the basis of the proposals made by the chambers of labour and the chambers of commerce and industry and other recognised occupational organisations. The number of assessors and their substitutes, which must be the same for employers and employees, is determined by the Ministry of Labour and varies with the importance and number of the branches of activity and employment in the area of the court. The appointment is made *ex officio* if after the lapse of a month the invitation to submit nominations has not been complied with by the respective employers' and employees' representative bodies. The assessors are under oath to judge according to their conscience and to respect the secrecy of the discussions.

The Labour Courts Act specifies that assessors and their substitutes must be Rumanian nationals who can read and write and have a knowledge of the Rumanian language. They must moreover have attained the age of 25 years, have complied with the law respecting military service, be in full possession of their civil and political rights and have carried on their occupation for not less than one year within the area of jurisdiction of the labour court. They are not eligible if they have been condemned, or if there is pending against them public judicial proceedings, for a crime or a minor offence including the repeated infringement of the labour laws. They may refuse or resign the post when they have reached the age of 60 years, are ill or infirm, or when they occupy an electoral post in the State, district or commune, or again if they are appointed guardians of minors. A fine varying from 5,000 to 10,000 lei may be imposed by the presiding judge upon an employer who prevents his employee from accepting the post of assessor

or fulfilling the duties of it. On the other hand, an assessor who fails to attend a sitting of the court or to carry out the obligations incumbent upon him is liable to a disciplinary fine varying only between 500 and 2,000 lei. He is exempt from paying the fine if he can subsequently justify his actions.

The Ministries of Justice and of Labour appoint the clerk, assistant clerk and other members of the staff of the labour courts. The expenses incurred for the remuneration of the staff and of the assessors are defrayed by the various chambers which are responsible for making the nominations, as stated above.

Competence of the Courts. — The labour courts are competent to settle, either by conciliation or by judicial procedure, disputes relating to employment relations between employers and wage-earning or salaried employees, between wage-earning employees and salaried employees, or between employees of either category among themselves. The various matters which come within the purview of the labour judiciary, irrespective of the amount at issue, can be most shortly defined by quoting the whole of section 9 of the Labour Courts Act in virtue of which the labour tribunals are competent :

" 1. In disputes arising out of the existence or absence of individual contracts of employment and the performance and cancellation thereof, gang contracts, or contracts of apprenticeship, those arising out of negotiations between the parties for the conclusion of contracts and out of the effects thereof, and disputes arising out of torts or quasi-delicts, in so far as they are connected with a contract of this kind.

" In particular, the category of disputes mentioned in the preceding paragraph shall comprise all disputes relating to wages and other forms of remuneration at the beginning, during the course, and on the cessation of the employment, service or apprenticeship, relating to the performance of an obligation, the granting of holidays, the infliction of fines, the return of sums deposited as security, of implements, objects, documents and certificates relating to occupational qualifications, and relating to the tenor of certificates delivered, dismissals and the evacuation of dwellings provided by an employer for his employees, whether gratuitously or for payment ;

" 2. In all disputes arising between the parties to a collective labour contract or between them and third parties with respect to such contract or between the parties affected by an arbitration award issued in a collective labour dispute ;

" 3. In disputes arising between wage-earning employees, between salaried employees, between wage-earning employees and salaried employees, or between them on the one hand and their occupational organisations on the other hand with respect to joint work or torts or quasi-delicts, in so far as these are connected with an individual contract of employment, a gang contract, a contract of apprenticeship, a collective contract or an arbitration award ;

" 4. In disputes between wage-earning employees and the persons who provide them regularly with implements of work, premises or motive power ;

" 5. In disputes between seamen and shipowners or ships' managers engaged in maritime or inland navigation to whatever purpose the vessels are put ;

" 6. In every collective labour dispute which under section 2 *(a)* of the Act of 18 October 1932 [1], comes within the competence of the ordinary courts ; the procedure for the settlement of such disputes by conciliation shall continue to be subject to the Act of 4 September 1920 [2], respecting the settlement of collective labour disputes.

" The above shall not include the various collective disputes comprised in the above category for the settlement of which, on the termination of conciliation proceedings, the parties have chosen by agreement an arbitration board or an arbitrator and which remain subject to the above-mentioned Act.

" The labour courts shall also settle collective labour disputes which are not mentioned in the first paragraph of this subsection irrespective of their importance as regards the number of undertakings concerned or of the employees affected by the dispute, if the parties either during or after the conciliation proceedings have consented to settle the dispute by arbitration but have failed to agree concerning the choice of chairman ;

" 7. To judge contraventions of the statutory provisions in operation respecting the regulation, organisation and protection of labour, handicrafts and health of workers, whether the administration of the said provisions falls within the competence of the officials of the Ministry of Labour, Health and Social Welfare or forms part of the duties of the officials subordinate to other departments. "

It will be observed that in view of the terms of subsection 6 above the Labour Courts Act does not affect the conciliation and arbitration procedure stipulated for in the Act of 4 September 1920 [3] otherwise than by bringing within the jurisdiction of the labour courts disputes which concern one or more undertakings situated in the same district and the number of workers connected with which does not exceed one hundred. Under the Labour Disputes Act of 18 October 1932, these disputes were formerly remitted to the ordinary courts if the parties had failed to appoint representatives for an arbitration commission in accordance with the provisions of section 19 of the 1920 Act.

An Act of 14 May 1937 [4] amends the Labour Courts Act of 1933 and provides for the abolition, in the districts where there are labour courts, of the conciliation and arbitration committees which formerly dealt with disputes between master-craftsmen or persons engaged in small industry and their employees. It also gives the labour courts jurisdiction with regard to disputes involving dramatic and lyric artistes, which were formerly handled by a special board of the National Theatre in Bucharest.

[1] Date of publication in the *Monitorul Oficial*. *L.S.*, 1932 (Rum. 7).

[2] *L.S.*, 1920, Rum. 4.

[3] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 501 *et seq.*

[4] *Monitorul Oficial*, 1937, No. 111, p. 4654.

The claimant is given the option of bringing an action before the labour court of the place of domicile or residence of the defendant or of the place where the work is performed or paid for. In the case of an action for tort, the deciding factor is the place where the wrongful act was committed and in the case of an infringement of some provision of law, the court of the district where the defendant is domiciled has jurisdiction.

The Parties and their Representatives. — In describing the general competence of the labour tribunals the terms "employers", "wage-earning employees" and "salaried employees" are used. It is important to observe, however, that these expressions also include persons or bodies which under the Labour Courts Act are placed on the same footing as the categories usually comprised by those terms. The Act defines the word "employer" as "any person or body corporate who or which employs as a rule in an undertaking or occupation one or more wage-earning or salaried employees either during the whole year or only at certain seasons". Other persons or bodies corporate may also be considered as employers, such as owners or captains of vessels engaged either in maritime or inland navigation ; persons who provide employees regularly with implements of work, premises or motive power for a fixed remuneration in money or in kind ; societies, associations, organisations, groups or institutions not operating with a view to profit, and public utility institutions or undertakings, provided that they employ as a rule one or more wage-earning or salaried employees.

Under the Act a "wage-earning employee" means a person who habitually performs manual work for an employer either during the whole year or only during a part of the year. But various classes of persons may be placed on the same footing as wage-earning employees. The Act gives a non-restrictive list of these persons, which includes, among others, home workers, door-keepers, watchmen, apprentices, heads of gangs and foremen, members of the crews of merchant vessels, and even persons who carry on a manual occupation in association with other persons, for their joint account.

By "salaried employee" on the other hand is meant a person who as a rule performs work which is entirely or partly intellectual for an employer either during the whole year or only at certain seasons of the year. Here again the Act gives a non-exhaustive list of persons to be considered as salaried employees. It mentions among others commercial travellers, head attendants in dining cars and sleeping cars, musicians, officers in the mercantile marine and persons performing work other than manual work on board merchant vessels. But it excludes persons who manage an undertaking, legal representatives of bodies corporate, and public officials. Agricultural employers and employees are not covered by the Act unless they are occupied in agricultural industries or forestry.

The parties to an action before the labour courts may be represented by either their parents, husbands, wives, children who are of age, or by members or salaried employees of employers' or employees' occupational organisations and by the representatives of the occupational chambers. In the absence of his father or guardian, a minor may be authorised to take part in judicial proceedings. The parties are always free to retain the services of a barrister to plead their case. These rules concerning representation remain subject to the general principle that the chairman of the labour court may at any stage of the proceedings require the appearance of the parties in person. If a party fails to

appear and does not justify his absence by a statement made in writing, the chairman is entitled to refuse the intervention of a legal representative, in which case judgment would go by default.

Procedure

The proceedings before the labour courts are governed by detailed rules of procedure contained in the Labour Courts Act. For instance, unlike the procedure before the ordinary courts of law, the Act exempts from stamp duty and registration fees all actions which are brought before the labour tribunals, provided that the amount of the claim does not exceed 10,000 lei or that the employee does not receive more then 5,000 lei per month, if the action is one for the payment of his wages.

Preliminary Proceedings. — A complainant must first submit his case to the chairman of the labour court by means of a statement made in writing or orally, to be recorded in writing and giving all the particulars. The presiding judge, after having examined the complaint, fixes the date for the hearing, which must take place within 10 days if the defendant resides in the locality, 15 days if he resides elsewhere in the country, and 30 days if he resides abroad.

The first hearing takes place before the principal judge or his substitute, who together with the parties examines the dispute and considers the possibility of a settlement by means of an amicable arrangement between them. If conciliation is successful the agreement reached is recorded in writing and takes the place of a final decision. When conciliation fails the judge may at the same sitting settle the case by judicial decision, provided that the parties agree to this method of procedure. Otherwise the dispute must be referred to the labour court sitting in plenary session.

The Trial. — When the labour courts sit in plenary session they are composed of a judge who acts as chairman and two assessors chosen by the parties from the persons appointed in the manner already described above in the section dealing with the composition of the courts. When a party refuses or fails to choose an assessor the chairman makes the appointment *ex officio* by co-option from the existing list.

The judges of labour courts may always be challenged on the same conditions as obtain in the ordinary courts of law. Among the grounds specified in the Act for the challenge of assessors and their substitutes should be mentioned here their personal interest in the case or in a similar one already pending for judgment, their relationship to the fourth degree to a party to the action, or again the fact of being either an employer or employee of one of the parties.

For the settlement of the collective labour disputes mentioned under subsection 6 of section 9 cited above, the plenary session of the labour courts includes a judge as chairman and four delegates, two of whom are nominated by the employer or employers and two by the employees concerned in the dispute. The appointment of the delegates and their substitutes must be communicated to the labour inspectorate within forty-eight hours after the failure of the conciliation proceedings. The purpose of this rule is obviously to make it possible for the administrative authorities to exercise a useful control over the appointment of the delegates.

Before opening the discussion at the plenary session of the labour court the presiding judge must again recommend to the parties an amicable settlement of the dispute. In any event an effort must be

made to decide the issue in one sitting. The result obviously will depend on the nature of the evidence to be obtained. The means of defence which are permitted in the ordinary courts of law may be resorted to also in the labour courts. Enquiries may be ordered. Witnesses and experts may be summoned at the expense of the parties to testify under oath. An adjournment of the case on account of the non-appearance of witnesses is not granted unless the decision to be taken amounts to a final judgment. And even in that case the non-appearance must be based on good grounds. Whatever be the reasons adduced only one adjournment may be granted.

The Act of 14 May 1937 [1] to which reference has already been made above, supplements the provisions of the Labour Courts Act of 15 February 1933. It stipulates that a case can be adjourned only once by reason of the absence of one of the assessors, and that only if the assessor is absent with the authorisation of the judge or detained for a justifiable reason. If at the postponed date the assessor is still absent the judge appoints a substitute. If there is no substitute present, the judge has a right to co-opt one of the assessors present, unless the party concerned has already nominated one of these assessors. If the Court cannot be thus constituted, then the judge may handle the case alone or with the help of any assessor present at the sitting. In the latter case, if a divergence of views arises, judgment is given by the judge alone.

The judicial proceedings either before a single judge or the full court are public, unless the court decides that undue publicity is likely to disturb public order or prejudice morality, or again when secrecy must be safeguarded in connection with certain manufacturing processes, inventions or undertakings.

Judgment and Execution. — The decisions of the labour courts are taken by a majority vote and in case of an equal division of the votes the chairman decides the issue. The judgment must be delivered on the same day or at any rate not later than the third day. It is signed by the chairman and assessors and countersigned by the clerk of the court.

As a general rule a sentence of the labour court becomes enforceable from the moment it is issued. But the judge may at the request of one of the parties suspend the execution of the judgment until a decision is given on appeal. If the judgment is one for the payment of a sum of money, one-third of the amount laid down in the judgment must be deposited by the party against whom the judgment is rendered. If that party deposits the whole amount stipulated in the judgment a stay of execution pending appeal is compulsory.

Appeals. — In Rumania there are no special labour courts of appeal. In civil cases the labour courts serve as courts of first and last instance for all disputes within their competence, provided that the amount involved, apart from the interests claimed and the costs of the action, does not exceed 50,000 lei, and subject to a right of annulment which must be exercised not later than within the fifteen days following the pronouncement of the judgment, before the ordinary court of law of the district in which the labour court has its seat.

With regard to claims for a sum in excess of 50,000 lei, or to claims which by their nature have no fixed value, the labour courts serve as courts of first instance, subject to a right of revision which must

[1] *Monitorul Oficial*, 17 May 1937, No. 111, p. 4654.

be exercised within fifteen days from the date of the pronouncement of the judgment.

No appeal is allowed against a preliminary or interlocutory judgment except in connection with an appeal against the final decision.

Against the decisions rendered in appeals to the ordinary courts, a further appeal may be lodged within fifteen days of the communication of the judgment, before the Appeal Court of the district in which the labour court is situated. The decisions of the Appeal Court are themselves subject to a further appeal before the Supreme Court.

In penal matters the labour courts are competent to deal with all contraventions to the provisions of section 9, subsection 7, quoted above, which formerly came before the justices of the peace, or certain administrative organs or commissions.

The arbitral awards made by the labour courts in the collective disputes mentioned in section 9, subsection 6 quoted above, are not subject to revision, but only to an appeal for annulment by the Supreme Court in accordance with the provisions of the Act for the organisation of the Supreme Court. When the appeal is granted, the whole file concerning the collective dispute is referred back to the competent labour court which must make a new award on the basis of the decisions of the Supreme Court.

3. Results

There are no uniform statistics available to show even in a general way the extent to which individual labour disputes were settled by the judicial labour machinery in existence in Rumania before the coming into force of the Labour Courts Act of 15 February 1933. But it may be worth while to give available figures to show what has been done in the two years after the establishment of a uniform system of labour courts for the entire country. In fact Rumania may serve as a good illustration of the cases in which countries which have only recently adopted the idea of a uniform system of labour courts to deal with individual labour disputes have found the activity of these special tribunals to be very great, even in the earlier days of their existence.

It will be noticed in the table given below that while the number of disputes remaining unsettled at the end of the year was greater in 1935 than in 1934, the number of cases settled in 1935 was still greater.

Year	Kind of action [1]	Cases settled						Total number of cases settled	Pending actions
		By conciliation	By abandonment, death, etc.	First instance		In appeal			
				By trial	By default	By trial	By default		
1934	Civil	1,084	263	1,719	416	2,341	578	6,401	3,668
	Penal	—	24	8,188	2,649	547	149	11,557	3,311
	Total	1,084	287	9,907	3,065	2,888	727	17,958	6,979
1935	Civil	1,311	696	2,478	407	1,862	598	7,352	5,643
	Penal	—	47	8,978	3,015	981	60	13,081	4,740
	Total	1,311	743	11,456	3,422	2,843	658	20,433	10,383

[1] Communication to the International Labour Office.

4. Summary

In Rumania practically all individual labour disputes and the collective disputes mentioned in section 9 above fall within the jurisdiction of the labour courts established in connection with the chambers of labour as provided for in the Labour Courts Act of 1933. The various labour tribunals are set up by Royal Decree on the recommendation of the Minister of Labour after consultation with the competent occupational chambers and organisations. Each labour court is composed of two judges, selected from a list of three law officers submitted by the president of the law court in the district, and of equal numbers of employers' and employees' assessors and substitutes, to be determined by the Minister of Labour, having regard to the importance of employment relations in the area of the Court. The lists for the selection of assessors and substitutes are drawn up by the representative bodies of employers and employees. All the appointments are made for a term of three years.

The labour judiciary is competent to settle by conciliation as well as by judicial procedure individual and collective labour disputes which arise between employers and their wage-earning or salaried employees, and those which arise between employees among themselves.

The Act contains detailed rules concerning the conduct of the proceedings, the representation of the parties and other questions of procedure. It gives conciliation procedure a very important part in the adjustment of disputes and invests conciliation agreements with the same force as is attached to judicial decisions.

Appeals against the decisions of the labour courts may under certain conditions be lodged before the ordinary court in the district or before the appeal court and subsequently before the Supreme Court. In the case of arbitral awards delivered in certain classes of collective disputes the Supreme Court is the sole court of appeal.

Until labour courts are set up for all parts of the country — so far twenty-two such courts are functioning — all disputes falling within the competence of the labour courts, except those mentioned in section 9, subsection 6, quoted above, will be settled urgently and before other kinds of disputes, in accordance with the rules of procedure laid down in the Labour Courts Act, by the justices of the peace without the help of assessors.

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SPAIN

1. INTRODUCTION

It is only since the beginning of the present century that Spain has had special tribunals for the settlement of labour disputes. The labour laws which came into force in 1908 [1] were the first to provide for a system of Joint Boards for the adjustment of collective labour disputes, and of industrial courts to deal with individual labour disputes. Subsequently various changes were made in the law.

The Labour Code approved by Royal Decree on 23 August 1926 [2] contained in Book IV a revised constitution for the industrial courts, whereas the Joint Boards Act of 27 November 1931 [3], which incorporated with very few modifications all the earlier enactments and decrees on the joint boards, laid down special rules of procedure for the settlement by the boards of collective disputes and of certain individual disputes, particularly those arising out of wrongful dismissals and in respect of claims for the payment of wages or for overtime.

2. THE SYSTEM IN FORCE

This was the situation until very recently, when a Legislative Decree of 29 August 1935 [4] modified the entire system, abolishing the industrial courts and entrusting all individual as well as collective disputes to the adjudication of the joint boards. These boards were also to be subject to the jurisdiction of a Central Labour Court. But this change was short-lived. The new political party which in the meantime had come to power passed an Act on 30 May 1936 [5], repealing the Decree of 29 August 1935 and restoring the situation which existed before the passage of the Decree.

The result is that at the present time the law on the statute books requires certain individual labour disputes, particularly those relating to industrial accidents, to be handled by the labour courts, while collective disputes, and individual disputes arising out of wrongful

[1] Cf. *Bulletin of the International Labour Office* (Basle), 1909, Vol. IV, p. 142.

[2] *L.S.*, 1926, Sp. 5.

[3] *L.S.*, 1931, Sp. 15.

[4] *L.S.*, 1935, Sp. 3.

[5] *Gaceta de Madrid*, 2 June 1936, No. 154, p. 1990.

dismissals and in respect of claims for the payment of wages or for overtime, provided the sum involved does not exceed 2,500 pesetas, come within the jurisdiction of the joint boards composed of six employers' assessors, six workers' assessors, with an equal number of substitutes, and of a chairman and vice-chairman.

Since the constitution and functions of the joint boards and the procedure applicable in the case of collective disputes have already been described in the study on conciliation and arbitration in Spain [1] it is only necessary to point out here that the Joint Boards Act of 1931 lays down special rules of procedure to be followed in the case of individual labour disputes and that it varies slightly according to whether the dispute is one concerning dismissals or wages. Appeals against decisions of an individual character issued by a joint board may be submitted, within the lapse of ten days, to the same board to be remitted to the provincial labour officer, who must issue the final decision within a fortnight. A brief description is given below of the law on the labour courts.

Constitution and Composition of the Courts. — The Labour Code provides for the establishment of labour courts in definite judicial districts. But if it is deemed advisable, the Government may, on its own initiative or at the request of the employers and workers in the region, order the institution of a labour court in the chief town of any judicial district not specified in the labour code. In such a case the views of the local and provincial labour offices, of the Chamber of Agriculture, Industry and Commerce, and of the official chambers of mines concerned, must be obtained.

The labour courts are composed of a chairman, who is usually an official of the ordinary judiciary appointed by the Government, and of two assessors and one substitute for each of the employers' and workers' groups.

When no official of the judiciary is appointed to act as chairman of the labour court, the office is generally held by the judge of first instance of the district where the labour court has its seat or, if there is more than one judge, by the judge appointed by the Ministry of Justice on the recommendation of the administrative chamber concerned. When the chairman is absent or unable to act, he is replaced by another judge of the same locality, or in default by the justice of peace.

The assessors and their substitutes are selected by lot drawn before the chairman and clerk of the court from the persons elected by the employers' and workers' organisations concerned. The elections are held every four years under the supervision of the judge of the chief town in the judicial district and in conformity with the rules laid down in the labour code. Not less than twenty employers' assessors and twenty workers' assessors must be elected for each district: this number may in special cases be raised to thirty-five assessors for each of the two groups.

It is not necessary for a person to be an employer or a worker in order to be made an assessor, but he must be an adult of Spanish nationality and elected in accordance with the regulations. The code enumerates the conditions which must therefore be fulfilled.

A person who does not renounce the duties of assessor within a week from the time of his nomination is deemed to have accepted the task. From then on he is expected to fulfil definite duties and in

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 460 *et seq.*

exchange for his services he receives compensation on the basis fixed by the Minister of Labour.

The right to choose candidates for the post of assessor belongs to the persons who have a right to vote for the appointment of delegates for local delegations to the labour council, and are domiciled within the jurisdictional area of the labour court.

The secretarial work of the court is carried out by a clerk appointed by the administrative chamber of the competent regional court of appeal. The clerk receives a salary. The lower staff of the court of law of first instance also lends its services to the labour judiciary.

Where no labour court has been set up, the judge of first instance discharges all the functions of a labour judge and, for the purpose, is subject to all the rules which govern the adjudication of labour disputes by the labour courts.

Competence of the Courts. — The labour courts are competent to deal with any dispute which is submitted to them by agreement of the parties, as well as with those specified in Article 435 of the Labour Code :

" 1. Civil disputes arising between employers and workers or between workers in the service of the same employer among themselves, respecting the non-fulfilment or rescission of contracts of service, contracts of employment, whether individual or collective, or apprenticeship contracts.

" Disputes concerning matters of an individual character arising out of the relations between railway companies and their employees in connection with the contract, and those arising in connection with the fulfilment of the seamen's articles of agreement mentioned in the second paragraph of section 55 of this Code, shall be deemed to be included in the above definition ;

" 2. Disputes arising out of the administration of industrial accident legislation, in relation either to private undertakings or to the State, a province, a municipality or any other body of an official character ; and

" 3. Disputes on account of non-fulfilment of Acts and legislative provisions of a social character which particularly affect the plaintiff and are not subject to any special administrative or judicial procedure. "

In all cases the competent court is that which has its seat in the judicial district in which the work is performed unless the parties have agreed to submit the dispute to another court. When there are two or more labour courts in the jurisdictional area where the work is performed, the plaintiff has the choice between the court of the domicile of the worker and the one in the place where the contract of employment was made, so long as the defendant comes within its jurisdiction and can be summoned there. In the case of a dispute between workers of the same employer, the court of the domicile of the defendant has jurisdiction. However, the court no longer has jurisdiction when the parties refer the case to arbitrators for settlement out of court.

The Parties and their Representatives. — While only persons enjoying full legal capacity may appear as plaintiff or defendant in an action before the ordinary courts, the workers as defined in the labour code and unmarried women are allowed to appear as parties to an action before the court from the age of eighteen years.

When a married woman comes before the labour courts, she is presumed to have been authorised by her husband. But if the latter

goes before the court to rebut that presumption, the judge must hear the two of them before he rules on the wife's right to continue with the action. In case of *de facto* or *de jure* separation the wife does not need to have the husband's authorisation.

The parties need not be present in person before the tribunal. They may be represented by anyone who is in full possession of his civic rights. The representative may be authorised by a power of attorney or by a declaration made in the presence of the clerk of the court. The litigants are free to retain or not to retain the services of an advocate or a solicitor to represent them before the labour courts and presumably before the regional court of appeal, but they must be assisted by a solicitor in actions before the Supreme Court.

A Decree, dated 21 March 1936, makes it unlawful for any official in any way connected with the Ministry of Labour to intercede in the capacity of attorney, agent or mere representative of the parties to a dispute before the labour courts, the joint boards or the social questions section of the Supreme Court [1].

Procedure

The proceedings in the labour courts are governed by detailed rules of procedure contained in the labour code. Moreover, certain regulations which apply to actions in the ordinary courts also apply to the labour tribunals. For example, the assessors may be challenged on the grounds specified in Article 660 of the Code of Civil Procedure for the challenge of witness. But only the main rules governing the procedure before the labour courts will be described here.

Preliminary Proceedings. — The action is begun by a written complaint addressed to the chairman giving him all pertinent information about the matter. If the action is admissible, the chairman must, within the following eight days, announce the date and hour when the preliminary hearing will take place.

The chairman must, at this hearing, endeavour to settle the matter by conciliation. If the parties accept an agreement, it becomes enforceable in the same manner as a final judgment. If conciliation fails, then the chairman fixes the earliest working day for the trial of the action, and convenes the assessors, the parties, the witnesses and the experts.

But in order to increase the chances of a settlement by conciliation, the chairman must not fix the day for the hearing sooner than three days after the termination of the conciliation procedure. Moreover, the parties are entitled at all times to remit the dispute to arbitrators for a settlement out of court, even though the contract which is the subject of the dispute says nothing to that effect.

Trial and Judgment. — When one of the litigants fails to appear at court but alleges valid reasons to justify his absence, the proceedings are adjourned, whereas when no justification is offered, the case goes on. There is every reason to believe that if both absent litigants failed to excuse their absence, the case would be taken off the docket.

An absent assessor is always replaced by his substitute. If for the lack of assessors and substitutes a case cannot be tried, each absent assessor is liable to a fine of 10 pesetas unless he can offer an excuse deemed valid by the chairman.

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[1] *Gaceta de Madrid*, 22 March 1936, No. 82, p. 2295.

At the trial the plaintiff is allowed to confirm or add to his claim, and the defendant in replying may even make a counter-claim, provided that the facts he alleges are subject to the jurisdiction of the court. In such cases the chairman decides upon the relevancy of the evidence.

When the pleadings are over, the chairman, acting in the capacity of a judge, puts down in writing the questions which the assessors are to answer. The latter deliberate in private and take a decision by an absolute majority vote. In case of an equal division of the votes, the chairman of the court decides. He must also render his judgment, based on the verdict of the assessors, the next day at the latest.

The judgment must also inform the parties of their right to appeal and of the time-limit during which it can be exercised.

Appeals. — The decisions of the labour courts are subject either to revision or annulment according to the circumstances. The appeal for revision must be lodged before the civil chamber of the regional court of appeal, which must examine whether or not the judgment was rendered in accordance with the law and, if necessary, modify it. Legal time-limits for oral and written proceedings are prescribed by the Labour Code. There is no appeal against a judgment of the regional court of appeal modifying the decision of a labour court. But a direct appeal to the Supreme Court for the annulment of a labour court decision may be made in accordance with the provisions of the labour code.

3. Results

The figures given below are taken from the *Anuario Estadistico de España* and from the *Boletin del Ministerio de Trabajo, Sanidad y Previsión* [1], for the respective years, and are intended to show the extent to which individual labour disputes have been handled by the joint boards, the labour courts and, where there are no special labour tribunals, by the judge of first instance. Tables I and II deal with the cases settled by the labour courts and the judges of first instance respectively, including appeals from either to the regional courts of appeal or the Supreme Court, according to whether the appeal was for revision or annulment of the judgment, while table III shows the number of individual disputes in which the amount involved did not exceed the sum of 2,500 pesetas [2], and the number of appeals taken from the joint boards to the provincial labour officer who, as mentioned above, is the competent authority to review the decisions handed down by the joint boards [3].

Since the passage of the Joint Boards Act in 1931, the number of actions brought before the labour courts, or the judges of first instance, has steadily decreased, while, according to available statistics, the number of disputes submitted to the joint boards has been on the increase. At any rate, each year there has been a larger number of cases settled by compulsory decisions, leaving nevertheless a very large percentage which were adjusted by conciliation of the parties. It will be observed that in all cases the number of appeals has been small in proportion to the number of disputes dealt with by the labour judiciary.

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[1] Publications of the Spanish Government.

[2] Cf. Joint Boards Act, 1931, section 20. *L.S.*, 1931, Sp. 15.

[3] *Ibid.*, section 27.

TABLE I — LABOUR COURTS AND APPEAL COURTS

Year	Complaints lodged	Cases settled			
		Relating to industrial accidents		Relating to contracts of employment, salaries and dismissals	
		Labour Courts	Appeal Courts	Labour Courts	Appeal Courts
1926	6,763	2,746	261	3,452	203
1927	6,546	2,069	234	3,755	245
1928	6,978	2,129	218	4,023	322
1929	6,927	2,493	184	3,635	266
1930	6,858	2,427	253	3,682	298
1931	7,312	1,944	137	4,335	377
1932	7,225	2,901	209	3,837	492
1933	6,760	2,648	220	2,933	409
1934	6,612	3,083	195	2,587	243
1935[1]	4,482	1,823	183	1,756	203

[1] In spite of the revolution the labour courts have continued to function since 1935 and statistics for the following years will be available at a later date.

TABLE II. — JUDGES OF FIRST INSTANCE AND APPEAL COURTS

Year	Complaints lodged	Cases settled			
		Relating to industrial accidents		Relating to contracts of employment, salaries and dismissals	
		Judges of first instance	Appeal Courts	Judges of first instance	Appeal Courts
1932	3,973	1,001	175	2,571	385
1933	3,209	960	198	1,738	258
1934	2,708	1,208	313	1,236	205
1935	1,943	845	179	865	120

TABLE III. — JOINT BOARDS

Year	Claims relating to					Cases settled by		Appeals [1]	
	Dismissals	Salaries and overtime	Miscellaneous	Unclassified	Total	Conciliation	Judgment	By the employers	By the workers
1932	—	—	—	—	70,718	25,223	19,796	3,981	
1933	41,341	57,505	8,437	1,073	108,356	29,224	38,656	7,095	2,189
1934	31,479	36,201	4,346	1,673	74,199	18,799	42,402	4,731	3,162

[1] These are appeals lodged before the provincial labour officer.

4. Summary

In Spain some individual labour disputes fall within the jurisdiction of the labour courts or, in default of these, within the jurisdiction of the judges of first instance, and others come under the jurisdiction of the joint boards. The labour courts are set up by the Government and are composed of a chairman acting in the capacity of a judge, and of two assessors and one substitute for each of the employers' and workers' groups. The chairman is generally appointed by the Government, while the assessors and their substitutes are chosen by lots drawn in the presence of the chairman and of the clerk of the court from the candidates nominated by the employers' and workers' trade organisations. The labour courts are competent to deal with all disputes which are submitted to them by common consent of the disputants and also with those specified in the labour code. The jurisdiction of the labour courts may at all times be excluded by the agreement of the parties to refer the matter to arbitrators for a settlement out of court.

The parties to a dispute may appear in person or be represented before the courts by either an advocate, a solicitor or by any other person exercising full civic rights. However, in appeal cases before the Supreme Court they must be represented by a solicitor.

The labour code lays down special rules for the conduct of the proceedings before the labour courts.

The judgments rendered by the labour courts may be either modified by the civil chamber of the regional court of appeal, or annulled by the Supreme Court.

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SWEDEN

1. Introduction

In Sweden the evolution of compulsory labour jurisdiction is of fairly recent date. While legislative measures with regard to conciliation and arbitration in labour disputes were discussed by the Swedish Parliament as far back as 1887, it was not until 1906 that legislative action was taken by an Act relating to mediation in industrial disputes. But this first attempt apparently was not as successful as might have been expected, and various proposals made with a view to improving the situation led to the passage, in 1920, of three Acts, one respecting conciliation in trade disputes and replacing the 1906 Act, another

dealing with special arbitrators and a third providing for the establishment of a Central Arbitration Board [1].

It was within the competence of the Arbitration Board set up under the third Act to decide all questions concerning the meaning and application of collective agreements, provided that the questions were referred to it in accordance with the terms of the collective agreement or with any other arrangements between the parties. Outside the ordinary courts of law no compulsory jurisdiction could be said to exist in regard to labour disputes. It was only on 22 June 1928 that the Labour Court Act [2] was passed abolishing the Central Arbitration Board and setting up in its stead a special Labour Court with compulsory jurisdiction in respect of justiciable disputes arising out of collective contracts. At the same time the legal effects of collective contracts were defined in a collateral Act [3].

2. The System in Force

The judicial machinery for the compulsory settlement of labour disputes set up under the Labour Court Act of 22 June 1928 consists of a central Labour Court with its seat at Stockholm. Meetings may, of course, be held elsewhere should this be found necessary. The Labour Court is competent to deal, not with all claims relating to labour matters, but only with those based on collective contracts. As will be seen below, the jurisdiction of the Court may, under certain conditions, be excluded by an arbitration agreement.

Constitution and Composition of the Court. — In accordance with the provisions of the Act the Labour Court was established by the authority which is competent to appoint the members of it, that is, by the Crown. One chairman and six assessors compose the Court. The chairman and two of the assessors are appointed directly by the Crown for a fixed period of time. They are selected from persons who cannot be considered to represent the interests of either employers or employees. The chairman and the assessor who is appointed vice-chairman must have legal qualifications and experience as judges. The other assessor must be a person having special knowledge and experience in regard to conditions of employment and other questions connected with contracts of employment. For each of these two assessors the Crown appoints a substitute, who must have the same qualifications as the assessors.

When both the chairman and vice-chairman are unable to act, the chair is taken by the other assessor appointed directly by the Crown, provided he possesses the required legal qualifications, and if this condition is not fulfilled, then the chair is taken by the substitute for the assessor who was appointed vice-chairman.

The remaining four assessors are appointed by the Crown for a term of two years. Two are appointed on the recommendation of the council of the Swedish Employers' Associations and two on the recommendation of the Swedish National Federation of Trade Unions. For each group four substitutes are appointed in conformity with the foregoing rules.

[1] *L.S.*, 1920, Swe. 6-8. See also *Conciliation and Arbitration in Industrial Disputes*, pp. 370 *et seq.*

[2] *Ibid.*, 1928, Swe. 3.

[3] *L.S.*, 1928, Swe. 2.

The Act lays down that the lists of candidates shall not be taken into consideration unless they contain the names of at least twice as many persons as there are to be appointed in each group. If either group fails to submit a list of candidates in accordance with this rule, the Crown then appoints the members and substitutes for that group.

The Act prescribes special qualifications for these four assessors and their substitutes. First, they must be Swedish nationals who have attained the age of twenty-five years. Secondly, they must not be under any legal disability. Bankruptcy proceedings that are still pending or a penalty either already pronounced or about to be pronounced rendering the candidate incompetent to hold public office or unworthy to represent another person in any court are a definite bar to the discharge of the duties of an assessor. On the other hand, an assessor is not debarred from serving on the Court in cases to which an association of employers or employees is a party on the mere ground that he or one of his relatives is a member of the executive of the association.

The assessor or substitute who, upon being recommended, has accepted the appointment, cannot resign except for special reasons. His resignation is submitted to the Crown for consideration. If he is permitted to retire, the Crown appoints another assessor or substitute to replace him during the remainder of his term of office, applying, *mutatis mutandis*, the rules mentioned above. But if an assessor is either absent or prevented by challenge from serving in any case before the Court, and a substitute cannot be summoned, then the chairman appoints another suitable person in his place.

Any elected candidate who has not already taken the oath as a judge must take the oath, either before the chairman or before a court of law of first instance, before he can discharge his official duties on the labour tribunal. The chairman and four assessors constitute a quorum, on condition that the assessors representing the employers and the employees are in equal number.

Competence of the Court. — The purpose of the Labour Court, as already stated, is to settle all disputes relating to collective contracts, and the Act lays down that these comprise all cases connected with the following matters:

"1. The validity, contents or interpretation of a collective contract;
"2. Whether a particular act is contrary to the collective contract or the provisions of the Act respecting collective contracts [1];
"3. The consequences of an action which is deemed to be contrary to the collective contract or the aforesaid Act."

But a dispute which would otherwise come within the competence of the Labour Court may by agreement between the litigants be referred to arbitrators for decision, provided that the question at issue is not the declaration specified in section 7 of the Act concerning collective contracts. The general effect of that section is to enable the Labour Court, at the request of one of the parties to a collective contract, to declare the contract inoperative where one of the parties has been found guilty of an act, generally essential to the contractual relationship, which is contrary in some material point to the contract or the provisions of the Act, or where circumstances are such that the contract does not apply to the other party. It is obvious enough that the said section 7 gives to the Labour Court a special power wich should not be superseded by a voluntary submission of the dispute to arbitration.

[1] *L.S.*, 1928, Swe. 2.

Moreover, the Act specifies that " if a collective contract provides that negotiations shall take place between the parties or between the associations to which they belong for the settlement of disputes respecting the contract, the Labour Court shall not examine the case until such negotiations have taken place, unless it appears from the circumstances that the negotiations have been stopped by obstacles for which the plaintiff is not responsible. "

The Parties and their Representatives. — There are special rules concerning the appearance before the Labour Court of the parties to the disputes which fall within the competence of this tribunal. The Act lays down that an association of employers or employees which has concluded a collective contract may bring an action in the Labour Court on behalf of any person who is or has been a member of the association, but a member of such an association cannot himself institute proceedings before that Court unless he proves that the association refuses to take action on his behalf. And the party, who wishes to bring an action in the Labour Court against a member or a former member of an association bound by a collective contract, must also bring the action against the association which may appear on behalf of the co-defendant if he does not himself enter a defence. The same rules apply where the collective body is a federation of associations instead of a single association.

Procedure

The rules of procedure applicable to the ordinary courts of first instance also apply to the Labour Court in so far as they are relevant and do not come in conflict with the special rules of procedure laid down in the Labour Court Act. These special rules are briefly summarised under the following headings.

Preliminary Proceedings. — A person who intends to institute proceedings in the Labour Court must apply to the chairman for a summons. The application must contain the name of the defendant, the allegations of the plaintiff and the grounds on which they are based. The chairman then summons the defendant to appear before the Court on a certain day, informing him that if he does not do so, judgment will be given against him by default. When there is doubt whether the case falls within the competence of the Court, it is left to the Court itself to decide whether or not a summons should be issued. From the moment the proceedings are begun each of the parties receives, through the chairman or the clerk of the court, notice or copies of all the documents relating to the case.

The Trial. — The Court may in the course of the trial summon witnesses and experts or make enquiries. Witnesses need not be sworn to give evidence, but they must not be under any disability such as would result from their having been previously sentenced for a criminal offence or from such other circumstances as may be defined by law.

It is stipulated in the Labour Court Act that the cases must be decided without unnecessary delay and if possible after one hearing. The proceedings at the trial are not stopped because one of the parties fails to appear, so long as the absent party received due notice at least seven days before the trial and has not shown lawful excuse for his absence.

Minutes of the proceedings are kept. Among other particulars the differences of opinion shown to exist between the different members of the Court at the time a final vote is taken must be recorded, and also any decisions of the Court not embodied in the judgment.

Judgment and Execution. — In order to despatch the business of the Court as quickly as possible, a special judgment may be pronounced with regard to part of the case or to specific questions arising in connection with it. Otherwise the judgment is given in a written instrument containing a short account of the case, the reasons for the judgment, and bearing the signature of the members who took part in the decision. The chairman has to have sent to the parties copies of the judgment signed by himself in the name of the Court.

The Court may issue distraint or sequestration orders for the proper execution of the judgment. It may even impose fines in case of failure to comply with the decision. But such fines cannot be commuted for a term of imprisonment in default of payment.

Appeals. — There are no appeals from the decisions of the Labour Court. The only recourse allowed to a party consists in lodging a complaint before the Parliamentary Law Officer [1] against the chairman or a member of the Court in case of some obvious error or negligence in the performance of their official duties. If necessary, the matter may be brought before the Appeal Court in Stockholm.

3. Results

The statistics contained in the table given below show the number of labour disputes which were submitted to the Labour Court from 1929 to 1935 inclusively. These statistics refer of course to disputes about rights only. As regards other labour disputes, that is disputes about interests, statistics will be found in the study on conciliation and arbitration in Sweden.

An interesting feature of the figures given below is the relationship between the number of complaints lodged by employers and those lodged by workers. It will be observed that the ratio between the two categories varies between slightly more than twice as many complaints lodged by workers as by employers during 1929 to eleven times as many in 1933. On the other hand, the number of cases brought before the Court by both parties is infinitesimal. There were actually no such cases in 1933 and 1935. The inference to be drawn is clearly that the efficaciousness of the Labour Court would be very much impaired if the Court were not entrusted with compulsory jurisdictional powers.

NUMBER OF CASES REFERRED TO THE LABOUR COURTS [1]

Year	By employers	By workers	By both parties	Total
1929	24	54	3	81
1930	44	105	1	150
1931	35	153	2	190
1932	41	179	1	221
1933	19	209	—	228
1934	44	166	1	211
1935	31	160	—	191
Total . . .	238	1,026	8	1,272

[1] Communication to the International Labour Office.

[1] Cf. *The Sweden Year-Book*, 1936, p. 11.

4. Summary

In Sweden the judicial labour system comprises only one Labour Court, with compulsory jurisdiction in regard to individual or collective labour disputes arising out of claims based on existing collective agreements. The compulsory jurisdiction of this tribunal may however be excluded by an arbitration agreement between the parties.

The Labour Court is composed of a chairman and six assessors appointed by the Crown, four of the assessors being specially recommended by the employers' and employees' organisations.

The proceedings in this Court are governed in part by the special rules of procedure laid down in the Act and in part by the rules which apply in ordinary courts of law.

The decisions of the Labour Court are final.

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SWITZERLAND

1. Introduction

In Switzerland the creation of special tribunals for the settlement of individual labour disputes was considered as early as the middle of the nineteenth century. But for several years there was strong opposition from those who claimed that the system contemplated,

in so far as it aimed at setting up tribunals composed of an equal number of representatives of two different classes of society, that is to say the employers and the workers, was anti-democratic and incompatible with the Constitution of the State, the existence of which is based on the union of the citizens and on their equality before the law. It was also argued that such tribunals would increase the danger of social conflicts.

Some considerable time elapsed before it was finally recognised that equality of the citizens before the law does not exclude consideration of certain differences which are due to the occupation and social position of the individuals, and that the existence of a special labour judiciary is not incompatible with equality before the law so long as no discrimination is shown between citizens who happen to be in similar situations. Moreover, the co-operation of the interested parties, as was rightly pointed out, tends to minimise rather than to increase class differences.

In 1874 the Cantons of Geneva and Neuchâtel led the way by establishing labour tribunals for the adjustment of labour disputes affecting civil law rights. These tribunals were composed of a justice of the peace as chairman and two assessors, one appointed by each of the parties to the dispute as it arose. The main defect of this system was the lack of experience of the assessors, who on each occasion acted more or less as the agents of the party by whom they were appointed. Subsequent legislation however brought about the necessary improvements. It should be pointed out that in this respect legislative competence devolves upon the cantonal authorities by virtue of the principle that any matter not placed by the Federal Constitution within the jurisdiction of the Confederation falls within that of the Cantons[1].

The Federal legislator, however, did not keep out of the field of labour jurisdiction altogether. For instance, section 29 of the Federal Factory Act, 1914, contains detailed provisions on civil procedure which exert considerable influence on the proceedings before the courts when matters affecting disputes between factory employers and employees are being considered. Furthermore, it may be added that sections 120 and 121 of the Federal Sickness and Accident Insurance Act require the Cantons to set up insurance tribunals to decide in the first instance disputes relating to compulsory accident insurance, and also lay down certain principles concerning the rules of procedure to be followed before these tribunals.

2. The System in Force

There are now permanent labour tribunals called "tribunaux de prud'hommes" in eleven of the twenty-five Cantons and half-Cantons of Switzerland[2]. These probiviral courts were set up in virtue of various cantonal laws passed in the following years: Geneva 1883; Neuchâtel 1885; Vaud 1888; Basle-Town 1889; Lucerne 1892; Solothurn 1893; Berne 1894; Zurich 1895; Fribourg 1899; St. Gallen

[1] On the subject of the legislative powers of the Federal and Cantonal authorities see the introductory chapter to the study on Switzerland in *Conciliation and Arbitration in Industrial Disputes*, pp. 212 *et seq.*

[2] Cf. *La Suisse économique et sociale*, published by the Federal Government, Vol. I, pp. 465 and 598 *et seq.*

1904; Aargau 1908, and Ticino 1918[1]. There is also the special tribunal for the lace-making industry set up in St. Gallen in 1899, which is a labour tribunal in a broader sense, and the insurance tribunals mentioned above.

In many Cantons the chairmanship of the probiviral court is entrusted to a jurist appointed by the local authorities. He has a casting vote and thus may decide in case of an equal division of votes between the assessors. In some Cantons, on the other hand, for instance in the Cantons of Geneva and Basle-Town, the chairman is chosen alternatively from among the employers' and workers' representatives. Sometimes, for instance in Zurich, the chairmanship is entrusted to a chief magistrate or to some other professional judge.

The representatives, who may be called judges *(prud'hommes)*, are themselves appointed in equal numbers by the respective occupational groups of employers and workers. More often than not their number is determined by the Government of the Canton. In the Canton of Geneva, for example, the probiviral court is composed of a chairman and four judges, of whom two are chosen from among the employers' group and two from among the workers' group. Lists for the purpose are drawn up as a result of elections held every four years, when each group nominates fifteen representatives. In Geneva the law on the labour courts provides for the payment of an indemnity of four francs per sitting for each labour judge and a supplementary indemnity of two francs per sitting for the presidents and secretaries of groups.

A common feature of the various probiviral courts is that they are generally divided into two or more chambers composed in such a manner that the parties to a dispute may be given the opportunity to appear before a chamber where the judges are of the same occupational groups as the parties themselves. Here again the number of chambers is usually fixed by cantonal regulations.

Competence of the Probiviral Courts. — The probiviral courts are competent to settle all disputes which arise out of the interpretation or application of a contract of employment or apprenticeship. The rights and obligations involved must be based on private law and not merely on public law. Hence these special tribunals have no jurisdiction with regard to disputes based on the employment relation between a civil servant and the Government authority which employs him, since the relationship of master and servant in such a case is governed by public law alone.

In some Cantons, for instance in the Canton of Berne, the probiviral courts are not competent to deal with disputes relating to the employment relations of domestic servants or agricultural workers, except with the consent of the parties. As a rule cantonal regulations fix a maximum amount beyond which the labour courts have no jurisdiction. This limit varies from 1,000 francs in some cantons to 3,000 francs in others. In Basle-Town the amount of the claim is of no consequence in this respect, provided that the parties accept the jurisdiction of the probiviral courts.

As regards territorial jurisdiction the principles followed are those which apply in the case of the ordinary courts of law. In all cases where the labour tribunals are alone competent, the jurisdiction of

[1] However, in the Canton of Ticino the law on the probiviral courts has not been put into operation as yet.

the ordinary courts is excluded. But there are also cases where the law gives jurisdiction either to the ordinary courts or to the labour tribunals at the will of the parties.

The Parties and their Representatives. — As a rule the parties are not allowed to be represented by attorneys-at-law, and this is so even when the parties are unable to appear personally. The only persons who are admitted as representatives are the members of the party's family, or the party's colleague or friend, provided that the latter does not usually act as his legal representative. In most cantons an employer may be represented by one of his employees. In the Canton of Geneva, a minor who is not able to have the assistance of his legal representative before the labour courts, is given an *ad hoc* representative by the Attorney-General.

It is interesting to note that the law in certain cases provides for the sittings of the probiviral courts to be held in the evening for the convenience of the parties who normally would be detained at work during the day, and of the judges who might otherwise be hampered in the exercise of their occupation.

Procedure

In every case an attempt is made to settle the dispute by means of an agreement between the parties. To this end a conciliation board is usually constituted from among the members of the court. In the Canton of Geneva, for instance, these conciliation boards are composed of a representative of the employers and a representative of the workers or employees who take turns in presiding over the conciliation proceedings, which are conducted orally and in private.

Failing conciliation the matter goes before the probiviral court where the pleadings are also made orally but the hearing is public. At any time during the hearing the court may, without any fixed limit of time, order such investigations as it deems necessary to elucidate the facts of the case. The judgment is delivered at the sitting. The costs are usually borne by the party against whom judgment is given, but there is no stamp duty. The Federal Factory Act similarly prescribes that the proceedings shall be free of charge in the case of dispute between the workmen and management of an undertaking, arising out of contracts of employment.

As a rule the judgment may be executed immediately if there is no appeal. Where an appeal lies the judgment only acquires executory force as from the expiration of the period of time fixed for lodging the appeal, provided that neither of the parties has exercised his right to lodge an appeal.

Appeals. — Each Canton of Switzerland also has its special rules relating to appeals against the decision of the probiviral courts. The purpose of the appeal may be to have the decision of the probiviral court declared null and void when, for instance, a rule of substantive law or of procedural law has been ignored or violated. Or it may amount to a mere request for a revision of the judgment by the same court either on the ground of mistake or on the ground that new evidence has been obtained, or again a regular appeal for a new trial before a superior court may be granted[1].

[1] On this point see *opus cit.*, p. 600.

The appeal system in force in the Canton of Geneva[1] may be taken as an example. The probiviral court there may serve as an appeal tribunal against the settlement arrived at before the Conciliation Board. An appeal against the decision of the probiviral court may also be lodged before a special Appeal Chamber if the amount involved is more than 300 francs or if a question of jurisdiction or *litispendens* is raised. This Appeal Chamber is composed of a chairman, three employers' representatives and three workers' representatives.

In Geneva the final appeal in labour matters lies with the Mixed Court, which is composed of two judges chosen from and designated by the Court of Justice of the Canton, and of three judges selected from among the members of the probiviral court. This of course is subject to the jurisdiction of the Federal Court, which in very exceptional cases may be called upon to give the final decision.

In the other Cantons there are no special labour tribunals for handling appeals from the probiviral courts, but such appeals may be taken before one of the regular courts of appeal.

3. Results

There are at present in Switzerland, apart from the insurance tribunals, forty-eight labour courts. To judge by the number of complaints lodged, the most important labour courts are those of Zurich, Geneva and Basle. The largest number of labour courts is to be found in the Cantons of Solothurn (11), St. Gallen (9), Berne (8) and Aargau (7). In other Cantons, such as Zurich, Lucerne and Fribourg, there is only one labour tribunal and its territorial jurisdiction extends to a few municipalities only.

The Federal Office of Industry, Arts and Crafts, and Labour has endeavoured to give a synopsis of the activity of the labour courts by means of statistics collected on a uniform plan. This is a rather difficult task, owing to the divergencies in the organisation and functioning of these courts. The first survey given of the activity of the labour courts refers to the year 1934 and appears in " La Vie Economique[2] ", a monthly publication of the Federal Department of National Economy. The figures reproduced from this survey in the table given below will suffice to show the usefulness of the labour courts.

The statistics collected for the year 1934 bear upon the activity of 46 labour courts in ten Cantons. It is worthy of note that out of 6,568 complaints lodged, 5,258 were settled without judgment, that is by withdrawal, abandonment, acknowledgment or agreement, and 1,255 by judgments of different sorts, which leaves a balance of 55 cases only which were not settled during the year.

It should be added that certain labour courts publish annual reports which are not without interest, particularly on account of the legal precedents they contain. In addition the Federal Office of Industry, Arts and Crafts, and Labour has published experimentally since 1933 a survey entitled *Bulletin de jurisprudence du travail* which appears every quarter and contains information on legal decisions relating to labour disputes.

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[1] Cf. *Loi organique sur les Conseils de Prud'hommes*, printed by the Canton of Geneva.

[2] *La Vie économique*, No. 10, October 1935, p. 516.

ACTIVITY OF THE LABOUR COURTS DURING 1934

Canton or town	Complaints lodged	Cases settled			
		By judgment			Without judgment [1]
		Claims granted	Claims granted in part	Claims rejected	
Aargau	247	30	19	14	184
Basle-Town . .	565	108	149	118	190
Berne	1,987	101	61	39	1,766
Geneva	1,043	(...	171	...)	871
Lucerne (town)	165	25	36	15	89
Neuchâtel . . .	270	(...	21	...)	213
St. Gallen . . .	215	(...	64 ...)	20	131
Solothurn . . .	464	(...	131	...)	333
Vaud	363	(...	98	...)	267
Zurich (town) .	1,249	19	10	6	1,214
Total . . .	6,568	(....	1,255	....)	5,258

[1] I.e. by withdrawal, acknowledgment, abandonment or agreement.

4. Summary

Outside the field of insurance, where disputes concerning compulsory accident insurance fall, on the one hand, within the jurisdiction of cantonal tribunals as already mentioned and, on the other hand, within the jurisdiction of the Federal Insurance Court, at Lucerne, which serves as a court of appeal, there is no federal system of labour courts in Switzerland for the judicial settlement of individual labour disputes. This is a matter which has been left by the Federal Constitution to the individual cantons. At present there are special labour tribunals called probiviral courts in eleven of the twenty-five cantons and half-cantons. These labour courts present certain common features. They are usually composed of a fixed number of employers' and workers' representatives elected by them and appointed for a fixed number of years according to local rules. The presidency of the court may devolve alternately upon a representative of one of the two groups or be entrusted by the local authorities to an independent person, who usually has a casting vote.

The probiviral courts have exclusive jurisdiction in all disputes which arise out of the interpretation or application of contracts of employment or apprenticeship. The parties to a dispute are not allowed to be represented by attorneys-at-law. If they are unable to appear in person they may be represented by a member of their family or by a colleague or friend. An employer may be represented by one of his employees.

The proceedings, which usually begin by an attempt to settle the dispute by means of a conciliation agreement, are governed by the local regulations in each canton. When a dispute is made the subject of a judgment, in the Canton of Geneva an appeal therefrom may be lodged before special labour courts of appeal and in other cantons before the ordinary courts of law in accordance with cantonal laws.

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UNION OF SOVIET SOCIALIST REPUBLICS [1]

1. INTRODUCTION

The history of the Soviet labour law begins, like that of all Soviet law, with the repeal of Acts passed before the Revolution and the abolition of courts established under the old régime. The origin of the Soviet legal system is to be found in Decree No. 1 of 24 November 1917, regarding the law courts [2].

Political and economic conditions when the Soviets were first in power and throughout the period known as that of " War communism " meant that no special relations concerning labour disputes were needed. Similarly the problems of conciliation and arbitration and of setting up special bodies for this purpose did not arise at that time.

After the introduction of the new economic policy (N.E.P.), special labour sessions were organised in the people's courts, as permanent chambers of the latter, which are the local courts of first instance. These sessions were included in the Labour Code of 1922 [3] (promulgated on 15 November 1922) and they form an integral part of the system governing conciliation, arbitration and the hearing of labour disputes.

The original version of the 1922 Labour Code states (Articles 168 and 169) :

[1] Monograph prepared by Professor I. S. Voitinsky.

[2] Collection of Laws and Decrees of the R.S.F.S.R., 1917, No. 4.

[3] *L.S.*, 1922, Russ. 1.

"168. Complaints respecting contraventions of the labour laws, and likewise all disputes arising in connection with employment for remuneration, shall be settled either by compulsory proceedings at special sessions of the people's court, or by conciliation procedure before an assessment and disputes committee or a conciliation board or arbitration court organised in accordance with the principle of joint representation of the parties. A special Order shall be issued to govern the procedure of each of these organisations.

"169. Every contravention of the Labour Code or of any other legal provision respecting labour, and every contravention of a collective agreement which entails a criminal prosecution, shall be dealt with at a special session of a people's court. This session shall be attended by a people's judge, who shall preside, and two members of the court, viz., one representative of the People's Commissariat of Labour and one representative of the trade unions.

"Every individual or collective dispute between employers and wage-earning or salaried employees may also be dealt with at such a session of a people's court, provided that it has not been referred to a conciliation board "[1].

In disputes on points of law individual workers could not submit their case directly to the conciliation boards or arbitration courts, but could act only through the trade union, and then only provided that the Union agreed to become a party to the dispute and to be represented in the arbitration court or on the conciliation board. In 1926 the competence of these bodies was limited to collective disputes arising out of the fixing of conditions or employment. Hence it was only between 1922 and 1926 that the conciliation boards and arbitration courts were competent to hear justiciable disputes.

Of much greater importance is another stipulation of the 1922 Labour Code, under which it is possible to have labour disputes settled, as the parties may decide, either by the labour sessions of the people's courts or by the joint committees which are set up in economic and administrative establishments and institutions. In its first version, the Labour Code (Article 172) stipulated that "disputes arising in connection with the application of collective and individual contracts of employment" might be referred to the joint committees. This article covers both disputes regarding the interpretation and application of collective agreements and individual or collective disputes about existing rights. A legislative measure introduced in 1928, and still in force, makes it compulsory in many cases to refer in the first instance to the joint committee certain labour disputes about rights (see below a detailed study of this measure).

To return to the labour sessions of the people's courts, it should be remembered that the representatives of the organs of the People's Commissariat of Labour who formerly sat in such courts were replaced in 1924 by those of the State economic authorities. The change was intended to separate the purely judicial functions of these courts

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[1] Soviet law makes no distinction, as regards the competence of the courts, between collective and individual disputes. The interpretation of collective agreements comes under the category of collective disputes as to the fixing of conditions of employment, and is not within the competence of the labour sessions.

from the function of supervising conditions of employment, which thenceforward fell to the organs of the Commissariat.

Thus it is clear that the 1922 Code gave competence to the labour sessions in both civil and criminal cases arising out of labour disputes on points of law. In other words, they were competent to decide disputes on points of law, and in addition infringements of the labour laws were automatically referred to them. Indeed, the 1922 Code gives first place to such infringements. The establishment and functioning of the labour sessions of the people's courts were closely connected with the reappearance of private undertakings, which were again allowed to exist after the introduction of the new economic policy. The labour sessions came into being in 1922 largely because a means was required of protecting the rights of workers and employees in trade and in privately owned industrial establishments, as well as of those working for handicraftsmen and, generally speaking, for any private employer.

With the subsequent progress of the new economic policy, measures to assist the economic recovery of the country gave way to the reconstruction of the national economy on a socialist basis and private enterprise steadily lost ground both in trade and industry. By 1929-1930, private capital had been almost entirely ousted from industry and it accounted for a mere 0.7 per cent. of the total industrial output. The share of private traders amounted only to 5.6 per cent. of the total retail transactions in 1930, and by 1931 they no longer figured at all in the country's economic life. The U.S.S.R. had now entered upon the phase of socialist reconstruction and the circumstances which had previously made it necessary to institute permanent labour sessions in the people's courts no longer obtained. These sessions had arisen out of the need for better protection of workers in private establishments and undertakings owing to the divergent class interests existing there. By 1931, this need had ceased to exist and the labour sessions accordingly had to be organised on a new basis if they were to be maintained at all as special chambers attached to the people's courts.

Under the Soviet economic system, the growth of production takes place in accordance with a general scheme, which is based on production plans worked out in advance and aims at systematically raising the workers' material and cultural standard of living.

Soviet policy in regard to the Socialist State undertakings and institutions has always been based on the axiom that in a Socialist economic system the interests of labour, whether those of each group or category or of each individual worker, are one with those of production — with which they are closely bound up — and with the true interests of the Soviet workers as a whole. When the U.S.S.R. entered upon its Socialist phase, the Soviet judicial authorities realised that it would be necessary to redouble their efforts for the protection of the interests of Socialist industry. It was decided that, not only all labour disputes, but also those regarding the protection of workers or of production should be referred to special chambers attached to the people's courts.

At the end of 1930 and the beginning of 1931, the labour sessions were therefore reorganised into sessions of the people's courts for the protection of the workers and of production. The reorganisation of these sessions was completed in 1933. They received the name of People's Courts for Cases regarding Production and Labour, and their sphere of competence was extended. It now covers all justiciable

disputes and criminal cases connected with the protection of the workers, in addition to criminal cases regarding the protection of industry and production in general, such as those connected with criminal acts to hamper the execution of production plans, with the theft of communal property, etc.

The civil procedure regarding labour questions has not been changed in consequence of this reorganisation. Together with the hearing of labour disputes in the joint committees, this procedure — which is examined below — constitutes the chief peculiarity of justiciable disputes under Soviet labour laws. Before studying the present system more closely, it may be pointed out that in practice it is confined to the two institutions of the people's court and the joint committee, since the conciliation boards created for the amicable settlement of labour disputes ceased to function in 1933 as a result of the second Five-Year Plan.

The conciliation boards and arbitration courts are declared competent by law to settle: *(a)* disputes arising out of the conclusion or modification of collective labour agreements and the addition of new clauses to such agreements; *(b)* disputes arising out of the establishment of new conditions of employment which the joint committees have been unable to settle (Article 169 of the Labour Code of the R.S.F.S.R. and corresponding articles of the labour codes of the other Federated Republics). Various factors have made it possible to compose differences of opinion regarding the fixing of general conditions of employment through informal discussions between the State economic authorities and the trade unions. Among these factors have been the gradual application of the system of planned economy to the regulation of conditions of work; the general improvement observed in the work of the State economic authorities, more especially in the management of trusts and undertakings by the respective industrial commissariats; and the reorganisation of the system of the remuneration of labour so as to afford an *automatic and immediate guarantee* to the worker that his wages will rise if the quantity and quality of his output improve. The differences of opinion in question are thus quickly dealt with and they seldom degenerate into labour disputes requiring the intervention of conciliation boards or arbitration courts.

Collective labour disputes arising out of the fixing of general conditions of employment no longer occur in the U.S.S.R., for in Soviet Socialist undertakings any differences in this respect were not disputes in the true sense, since a conflict of classes and of interests is unknown and the interests of Socialist industry and Socialist workers are identical. Such differences arose, not out of the relations between workers and Socialist undertakings, but out of temporary conditions prevailing in the early stages of reconstruction, out of the new economic policy, the low level of industrial production, imperfect organisation and other similar causes.

The joint committees settle: *(a)* individual disputes; *(b)* disputes arising out of the fixing of individual conditions of employment on the basis of the general conditions established by collective agreements (the application to specified workers of a standard individual output, the fixing of piece rates on the basis of the existing scale, the classification of workers according to skill and their placing in the wage category pertaining to their degree of specialisation). Only a small proportion of the cases dealt with by the joint committees in recent years come under type *(b)*.

2. The System in Force

The system now obtaining in the U.S.S.R. for the settlement of labour disputes (i.e. disputes about existing rights) was defined in detail by the Central Executive Committee and the Council of People's Commissaries of the U.S.S.R. in Regulations of 29 August 1928 concerning arbitration, conciliation and judicial procedure in regard to labour disputes [1]. The whole system for the settlement of labour disputes was thereby reformed, without being altered in essentials. The object was to simplify procedure and to speed up the hearing of cases. The amendments contained in the Regulations of 29 August 1928 have been incorporated in the civil procedure codes of the federated republics. Certain questions regarding the settlement of these disputes are dealt with in special orders.

(a) *Bodies competent to deal with Justiciable Labour Disputes*

Labour disputes about existing rights are dealt with by the joint assessment and disputes committees (referred to below as "joint committees") in the separate undertakings, institutions and establishments, or by the people's courts in matters regarding labour and production (referred to below as "labour courts").

A joint committee is set up in every undertaking and institution and consists of an equal number of representatives of the management and of the workers' and employees' committee (the primary organ of the corresponding trade union). It is presided over by a representative of each party in rotation. If the chairman is a representative of the management, the secretary is appointed by the workers' committee, and *vice versa*. The decisions of a joint committee must be unanimous, each party having only one vote, irrespective of the number of representatives it may have on the committee. If the committee fails to reach a settlement, the case may be referred to the court.

In the chief workshops of an undertaking, joint committees are set up on the same basis of equal representation. These workshop committees are competent to settle all justiciable disputes arising there, except those concerning the transference of a worker to another post outside the workshop, dismissal owing to staff reduction or the introduction of a shorter working day or longer annual holidays. These questions must be referred to the joint committee for the whole undertaking. In practice, all disputes which are not settled by the workshop committee are automatically referred to the larger committee.

A *labour court* is organised in each industrial district as a special chamber of the local people's court. It has competence to deal with disputes about rights and civil and penal cases concerning labour and production (see above). In contrast to the original system of special labour sessions of the people's courts, the labour courts are organised on the same basis as the ordinary people's courts. They consist of the chairman (a permanent people's judge) and two assessors chosen from lists of names drawn up *ad hoc* (instead of the two permanent

[1] Collection of Laws and Decrees of the U.S.S.R., 1928, No. 56. *L.S.*, 1928, Russ. 1.

labour representatives who formerly attended the labour sessions). In drawing up the lists of assessors, attention is paid to the nature of the cases submitted to the labour court. The lists include representatives of the State economic authorities, workers, and experts [1]. In places where no labour court exists, cases within their competence are heard by the ordinary people's courts [2].

In certain cases the plaintiff can choose between the joint committee and the labour court, but more often, and in all cases of decisive importance, the case must first be taken to the joint committee. The law specifies in which cases "investigation by the joint committee, as the essential court of first instance, shall be compulsory", namely, those regarding: *(a)* the transference of a worker from one employment to another and the related questions of the maintenance of his earlier remuneration or the granting of compensation; *(b)* the remuneration of workers who have failed to attain the standard of output required; *(c)* dismissal for inefficiency or for refusing to perform work; *(d)* compensation for wear and tear of tools belonging to the worker; *(e)* working clothes and special food (or compensation therefor); the reduction of working hours, additional holidays: *(f)* remuneration due to a worker holding several posts with different scales of wages; *(g)* remuneration of workers during interruptions of work caused by temporary closing down of the undertaking: *(h)* remuneration due while preparing piece work; *(i)* remuneration in respect of unfinished piece work; *(j)* remuneration for defective work, deductions from wages in respect of machinery or tools broken by the worker (where special laws require a preliminary decision by the joint committee); *(k)* allowances for time during which a worker has been unable to work; *(l)* compensation for annual holidays not taken; *(m)* remuneration during the probationary period; *(n)* bonuses due to workers; *(o)* payment for overtime; and *(p)* leaving grants when the worker terminates his contract of employment through the employer's fault.

The prestige of these joint committees as courts of first instance has been greatly increased by the law's attribution to them of so many types of cases. They are, moreover, specially qualified to deal with cases arising in the undertaking itself. Even if the joint committee is unable to reach a settlement, the task of the labour court is made easier by the previous hearing of the case before the committee [3].

A case which has already been settled in the joint committee may not be referred to the labour court unless the committee's decision is annulled by the trade union or judicial authority responsible for supervision. (See below for conditions of appeal against decisions of the joint committee.)

[1] Workers and employees receive their average wage throughout the time they spend as assessors in the labour courts.

[2] The people's courts are at present being reorganised. It is proposed to abolish most of the special chambers attached to these courts, including those for dealing with cases regarding production and labour. The object of this measure is to allow the people's court to deal with all cases coming within its province.

[3] The percentage of cases which the joint committees fail to settle varies somewhat from one trade union and undertaking to another. In most undertakings, it does not exceed 10 to 15 per cent.

(b) *Time-Limits for referring Cases to the Joint Committee or the Labour Court*

The time-limits fixed for referring a case to the joint committee are as follows :

(a) cases of dismissal and deductions from wages — 14 days ;

(b) cases regarding payment for overtime — 30 days ;

(c) all other cases — three months.

The time-limits for referring a case to the labour court are as follows :

(a) cases of dismissal which have not been heard in the joint committee — 14 days ;

(b) all other cases where recourse to the joint committee is not compulsory — three months.

(If the case has been referred unsuccessfully to the joint committee, the time-limit of three months is reckoned from the day when the parties are informed of the committee's failure to reach a settlement.)

(c) all cases where a preliminary hearing in the joint committee is compulsory — 14 days from the date when the parties are informed of the committee's failure to reach a settlement ;

(d) all cases where the decision of the joint committee is annulled by a higher court — 14 days from the official announcement of this fact.

The joint committees and labour courts may agree to investigate a case referred to them after the expiration of the regulation time-limits if the delay is due to *force majeure*. The Regulations of 12 December 1928 concerning joint committees, which are still in force, admit the following cases of *force majeure : (a)* illness requiring treatment in a hospital or clinic ; *(b)* quarantine or attention required by a sick member of the family ; *(c)* annual holiday ; *(d)* arrest ; *(e)* employment on a mission ; *(f)* change of domicile following upon that of employment ; *(g)* performance of military service or discharge of the duties of judge ; *(h)* participation at a congress, conference, etc. ; *(i)* hindrance arising out of interrupted communications or any other circumstance recognised by the joint committee as constituting a valid excuse.

(c) *Procedure in the Joint Committees and Labour Courts*

Applications made to the *joint committees* must be considered within two days. The committees hold their meetings out of working hours, and the worker concerned must be informed in time to permit of his presence when the case is heard.

Procedure in the *labour courts* and the courts of higher instance (in the case of appeals for revision or annulment of a decision) is governed by the civil procedure codes of the Federated Republics and the special regulations issued for the purpose of assisting workers in the conduct of their case and of preventing delay in dealing with justiciable labour disputes.

The plaintiff is not bound to apply to the court in writing, but can do so orally, and he may have a statement of his grievance drawn up there. Labour cases are not liable to the ordinary legal charges and the plaintiff cannot be made to pay costs.

A worker may be represented in court by a third party, whose credentials may be made out and legalised in the undertaking or institution where the worker is employed, or by a barrister belonging to the College of Defending Counsel, or by an accredited representative of his trade union. The representatives of the trade unions are entitled both to defend the interests of their members in court and to bring an action on their behalf in cases connected with the situation of the workers as wage earners.

These representatives must hold a written warrant from the trade union authorising them to act in this capacity, but a similar warrant from the trade union member who is a party to the case is not essential. The trade union representatives are empowered to carry out on the worker's behalf, and without formal authority from him, all operations arising out of the case, except those which require a special authorisation under the Civil Procedure Code (settlement by conciliation, admissions by the worker, abandonment of some or all of the claims in respect of which the action was brought, the receipt of goods or cash) [1].

The labour courts, i.e. both the people's courts of first instance and the district courts (which serve as courts of appeal), must hear labour cases within five days of their notification (Article 53 *(a)* of the Civil Procedure Code of the R.S.F.S.R.) [2].

The courts must send the parties a copy of their award or of their decision on an appeal for annulment within three days of the issue of the award or decision.

Article 4 of the Labour Code stipulates that all collective agreements and contracts of employment which provide less favourable working conditions than those specified in the Code shall be null and void. Consequently, the settlement of a labour dispute by conciliation is legally binding only if it does not encroach in any way upon the worker's rights under the law. Such a settlement may not be confirmed by the court unless the above rule is observed.

(d) *Execution of Rulings and Judgments of the Joint Committees and Labour Courts*

If the management fails to carry out of its own free will the joint committee's decisions, it may be compelled to do so by the issue of a special certificate to the worker which bears the same authority as an Order of the court. This certificate was formerly issued by the labour authority responsible for supervising the joint committee. Since the functions of the People's Commissariat of Labour were taken over in 1933 by the trade unions, the right to issue certificates is vested in the trade union organ to which the joint committee is subordinate (see below, section on appeals against the joint committees' decisions). The supervisory judicial authorities can suspend the execution of the joint committee's decision, should they decide to appeal against it.

The labour court's decisions take effect immediately in cases involving the payment to a worker of a sum not exceeding his monthly

[1] Circular of the Commissariat of Justice and the Supreme Court of the R.S.F.S.R., 1926, No. 236/12.

[2] According to section 58 of the Regulations of 29 August 1928, concerning conciliation, arbitration and judicial proceedings in regard to labour disputes, the time-limit within which the courts must deal with labour cases is seven days.

wages. Decisions requiring the payment to him of higher sums take effect at once up to the amount of his monthly wages, but immediate payment of the remainder can only be demanded if the court makes a special order to that effect.

Certain applications for payment arising out of the contract of employment may be enforced through a simplified procedure based upon the issue by notaries or, as in the Ukraine, by the courts or similar judicial authorities, of an order to pay, without the necessity of formal proceedings. In the R. S. F. S. R. the notaries and local executive committees of Soviets (urban committees, district committees, etc.) issue orders to pay in the case of sums owing to or by a worker on the basis of certain specified documents regarding conditions of work. These are of three kinds : *(a)* individual or collective contracts of employment or wage books, or wage lists, produced with a view to recovering wages and trade union contributions, if the contract of employment provides that such contributions shall be paid by the employer ; *(b)* documents certifying that the worker has received from a State co-operative or public undertaking or institution advances in wages or credit to meet the cost of his journey to the place of work, these being produced with a view to recovering from the worker the sums owing by him if he has not presented himself at his new post, or if he has left it before earning a wage equal to the advances obtained, or before completing the work specified by his contract ; and *(c)* documents certifying that the worker upon dismissal was in debt to the State co-operative or public undertaking or institution (after deduction of wage stoppages authorised by the Labour Code) in respect of property belonging to the undertaking or institution which he has appropriated, lost or damaged (working clothes, tools, instruments of precision, etc.), such documents being produced with a view to recovering sums owing by the worker.

(c) *Appeals against the Rulings and Judgments of the Joint Committees and Labour Courts*

Appeals may be lodged against the joint committees' decisions, and these may also be annulled by the authorities supervising the work of the committees. The task of supervision devolved upon the People's Commissariat of Labour and its local organs until 1933. Since the transfer of its functions to the Central Trade Union Council, this supervision has been carried out by trade union organisations.

An appeal may be lodged with the joint committee for the whole undertaking against a decision by a workshop committee. Custom requires that the former, when acting as a supervisory body and annulling a decision by the latter, shall make its own pronouncement regarding the merits of the case.

An appeal may be lodged against this pronouncement, or against any decision not to annul the decision of a workshop committee, with the trade union authority to which the joint committee for the undertaking is subordinate. According to circumstances this trade union authority may be the factory inspector attached to the district or central committee of the union, the district committee, the local representative of the central committee, or the central committee itself. The appeal may in all cases be taken as far as the central committee of the union : that is to say, appeals against a decision of the factory inspector attached to the union's district committee may

be lodged with the executive officers *(presidium)* of that committee; appeals against a decision of a factory inspector or an accredited representative of the union's central committee, or of the executive officers of the union's district committee, may be lodged with the officers of the central committee of the union. The decision of the latter is final and irrevocable.

Appeals against the decision of a joint committee must be lodged within 14 days, both in the case of an initial decision and in that of any subsequent decision by the courts or other bodies with which an appeal has been lodged.

The joint committee for the undertaking must hear appeals against a decision by a workshop committee within two days, while other instances hear appeals against decisions by the joint committee of the undertaking within three days [1].

In the event of one of the trade union authorities mentioned above annulling a decision by the joint committee of the undertaking, the interested party may either demand a fresh hearing of the case by the same committee or take it to court.

The law states that a decision taken by a joint committee can be annulled only in the event of a grave infringement of labour law, whether substantive or procedural, or the production of fresh evidence or of proof that documents or information which influenced the committee's decision were false. In practice, the hearing of appeals against decisions by the joint committees and their annulment by an authority with supervisory powers implies an enquiry into how far such decisions were justified on the merits of the case.

Appeals for the annulment of decisions of the people's court in labour cases may be lodged within 15 days, either by the interested parties or by the Public Prosecutor, with the district court or the higher court of the autonomous Republic. Decisions of the people's courts are irrevocable and take effect immediately: *(a)* in cases regarding the recovery on a worker's behalf of sums not exceeding his monthly wage, provided the case is unconnected with his dismissal; and *(b)* in those arising out of an application by the workers for the annulment of a reprimand administered by the management of the undertaking employing them.

The court of second instance must announce its decision within seven days by simply rejecting or confirming the appeal, or by referring it back to the labour court for a fresh hearing. It may pronounce an award on its own initiative, without referring the case back to the labour court for a fresh hearing, if the question at issue is sufficiently clear or if it is only necessary to modify the statement as to the reasons governing the decision (references to law, etc.). The court of second instance also pronounces an award if the labour court, when hearing a case for the second time, commits the same errors as before and fails to abide by the recommendations of the court of appeal.

In addition to appeals by the parties or the Public Prosecutor for the annulment of a decision, Soviet civil procedure allows a court award to be revised on the basis of fresh evidence or in virtue of a decision by the supervisory judicial authority. This supervision is

[1] See the *Bulletin of the Central Council of Trade Unions of the U.S.S.R.*, 1935, No. 5-6, Decree of the Secretariat of the Central Council of Trade Unions, dated 28 December 1934.

exercised by the Public Prosecutor's department, but an award may be revised through this channel only in exceptional cases, such as when it constitutes a grave infringement of law or is seriously detrimental to the interests of the Workers' and Peasants' State or of the worker himself. Applications for an award to be revised must be formulated within three months of its announcement by the court. All awards by a district court sitting as a court of appeal or by a labour court after a second hearing of a case (provided such awards take into account the recommendations of the court of second instance) are final and irrevocable.

An application for revision can, however, be lodged with the supervisory judicial authority in the case of awards of a court of appeal or those pronounced after a second hearing by a labour court. The supervision in this case is carried out exclusively by the Commissary of Justice of the Federated Republics, the President of the Supreme Courts of the U.S.S.R. and the Federated Republics, and the chief Public Prosecutors of the U.S.S.R. and the Federated Republics. No time-limit obtains in this case and the above authorities may order an award of the labour court to be revised after the expiration of the time-limit which applies, as has been seen above, to the judicial authorities responsible for supervising the people's courts.

In all cases where an award of a joint committee or a labour court is annulled by the courts or the supervisory judicial authorities, the sums already paid to a worker under such an award can be reclaimed only if the reason for the annulment was that his statements or the documents produced by him proved to be false. Sums improperly obtained by a worker can be recovered only through legal channels and after a decision to this effect has been given by the people's court.

3. Conclusion

In the various undertakings and institutions, individual cases regarding the fixing of conditions for one or more workers (i.e. those concerning the interpretation and application to each separate case of general working conditions established for the undertaking as a whole) are heard by the joint committees. Labour disputes about rights are settled *(a)* in the *joint committees*, whose chief concern they are, and *(b)* in the *courts*, account being taken of a certain number of special regulations as to civil procedure.

In practice, most justiciable disputes are settled by the joint committees, whose decisions express the unanimous opinion of representatives of the management and the local trade union organisation. If a worker does not lodge an appeal against such a decision with the trade union authority responsible for supervision of the committee, this implies that he is satisfied with it and that it is undoubtedly justified by the facts of the case, by custom and by law.

Cases involving more controversial points generally end up in court, even if they are first referred to the joint committee, the reason being either that the committee has failed to reach a solution or that its decision has been annulled by a supervisory authority. The real importance of the people's courts as legal instruments for interpreting the law in labour disputes is considerably greater than would appear from statistics regarding the number of cases referred to the joint committees and to the people's courts respectively.

With the object of raising the standard of judgments, in civil cases, including labour cases, special boards for civil cases have been set up in the Supreme Courts of the U.S.S.R. and the Federated Republics and in the higher courts of the autonomous Republics. Their chief aim, when hearing labour cases, is to combat infringements of labour law or of discipline among the workers and unsubstantiated claims advanced by the parties.

In 1936, special sections for civil cases were established in the Public Prosecutor's Department of the U.S.S.R. and the Federated Republics and in the district Prosecutors' departments. Their chief function is to check the judicial supervision exercised over cases and suits arising out of relations between workers and the undertaking or institution employing them.

This survey of the ways and means available to workers under Soviet law for defending their interests as wage earners would not be complete unless attention is drawn to the connection between the system for hearing labour cases and another important legal institution which plays a great part in the Soviet Union.

In all the State offices, leading economic organisations, trade unions, newspaper offices, etc., a special system has been organised to receive and hear the complaints of workers. An Office of Complaints has been set up in the Soviet Supervisory Body attached to the Council of People's Commissaries of the U.S.S.R. to check the organisation of the system for hearing complaints by workers. In the various districts and localities this function devolves upon the accredited representatives of the Soviet Supervisory Body.

The above system allows any worker to point out defects and abuses in the Soviet administration and infringements of the socialist legal order. It ensures that complaints shall receive immediate attention and that suitable steps shall be taken to remedy any defects revealed (i.e. through official channels, by the intervention of the Public Prosecutor's department, etc.). Officials in a State office or a leading economic organisation who ignore complaints made by workers may be prosecuted under the present laws.

This procedure for hearing complaints by workers has become a recognised legal institution. Like the others, it is of real importance in protecting the rights of the worker arising out of his position as a wage earner (especially in questions of principle, such as unjustified dismissal, unjustified refusal of employment, disciplinary punishments unjustly inflicted, etc.).

Number of Civil Cases regarding Labour Questions heard in the Courts of the R.S.F.S.R.

(Not including the autonomous Republics)

1926 :	first	half year...	85,438	1931 :	first	half year...	41,667
	second	„ „ ...	101,979		second	„ „ ...	40,058
1927 :	first	„ „ ...	128,811	1932 :	first	„ „ ...	41,118
	second	„ „ ...	136,206		second	„ „ ...	41,098
1928 :	first	„ „ ...	49,178	1933 :	first	„ „ ...	60,642
	second	„ „ ...	91,851		second	„ „ ...	64,849
1929 :	first	„ „ ...	159,091	1934 :	first	„ „ ...	80,003
	second	„ „ ...	129,367		second	„ „ ...	74,185
1930 :	first	„ „ ...	116,137	1935 :	first	„ „ ...	103,423
	second	„ „ ...	70,591		second	„ „ ...	114,408

TYPES OF LABOUR CASES HEARD AND SETTLEMENTS REACHED IN THE PEOPLE'S COURTS OF THE CITY OF MOSCOW IN 1935 [1]

Settlement	Wages owing	Payment for overtime	Applications for reinstatement of dismissed workers for unjustified dismissal	Miscellaneous kinds of compensation	Alteration of reasons for dismissal	Miscellaneous	Total
Complete satisfaction.....	2,725	578	3,685	1,140	536	3,384	12,048 55.0 p.c.
Partial satisfaction.....	658	191	1,039	344	169	700	3,101 14.2 p.c.
Claims rejected..	963	420	2,058	546	250	1,189	5,426 24.8 p.c.
Shelved	362	63	311	166	57	372	1,331 6.0 p.c
Total.....	4,708 21.5 p.c.	1,252 5.7 p.c.	7,093 32.4 p.c.	2,196 10.0 p.c.	1,012 4.6 p.c.	5,645 25.8 p.c.	21,906 100.0 p.c.

NOTE : Applications for compensation for cessation of work resulting from unjustified dismissal are entered in column 4.

[1] According to data supplied by the Court of the City of Moscow.

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UNITED STATES OF AMERICA

1. INTRODUCTION

The reason for including the United States of America in a study on labour courts is to be found in the legislation passed recently in that country to establish a National Labor Relations Board for the quasi-judicial settlement of certain labour disputes. Previously there had not existed in the United States any form of tribunal which could properly be called a labour court.

In an earlier study on conciliation and arbitration in the United States of America, published by the International Labour Office [1] in 1933, a description was given of the Federal and State agencies for the adjustment of labour disputes, besides the ordinary courts of law ; the most important of these agencies is the Federal Conciliation Service of the Department of Labor which serves as a mediator in a great many collective disputes each year [2]. But with the passage of the National Industrial Recovery Act, which became law when signed by the President of the United States on 16 June 1933, new machinery for the adjustment of labour disputes proved necessary, for section 7 *(a)* of the N.I.R.A. provided :

> " Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions : (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing ; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President . . . "

Collective bargaining thus became a matter of obligation in most industries. Needless to say, section 7 *(a)* was interpreted in different ways, the main divergence of opinion being between the views of the employers' associations on the one hand and those of the trade unions on the other. No special machinery had been devised for the adjustment of such differences, but they were soon brought within the purview of the National Labor Board, set up by the President on 5 August 1933, in virtue of the general powers conferred upon him by the N.I.R.A., to mediate upon disputes arising out of the application of the President's Re-employment Agreement, which included section 7 *(a)*.

The First National Labor Board, 1933-1934. — The National Labor Board consisted originally of three representatives of workers, three representatives of employers and of an impartial chairman, all of whom were appointed by the President. The " labor " members were appointed on the recommendation of the Labor Advisory Board of the National Recovery Administration [3] and the " industry " members on the recommendation of the Industrial Advisory Board. The number of members of the Board was subsequently raised to eleven and finally to thirteen members, including one chairman, two vice-chairmen and five representatives each of the employers' and workers' interests [4].

[1] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 508 *et seq.*

[2] Cf. *Twenty-fifth Annual Report of the Secretary of Labor*, 1937, pp. 13 *et seq.*

[3] A body of administrative officials appointed by the President and entrusted with the application of the provisions of the National Industry Recovery Act.

[4] Cf. LORWIN and WUBNIG : *Labor Relations Boards*, p. 111.

The powers of the National Labor Board were defined by an Executive Order issued by the President on 16 December 1933 laying down that the Board " shall continue to adjust all industrial disputes, whether arising out of the interpretations or operation of the President's Re-employment Agreement or any duly approved industrial code of fair competition, and to compose all conflicts threatening the industrial peace of the country ". The settlement of labour disputes was to be effected by mediation, conciliation or voluntary arbitration. The Order also empowered the Board to set up regional boards having similar powers. The conclusions of the latter, however, were subject to review by the Central Board. So far as the decisions were mediatory in character, their operation depended on the acceptance of the parties — ordinarily embodied in a collective agreement. Where the parties had agreed to submit to the Board's arbitration, this acceptance was pledged in advance. But in the course of time many of the industrial disputes brought before the Board involved alleged violations by the employer of his obligations under section 7 *(a)*. In those cases where the Board held that the employer had violated section 7 *(a)* a problem of enforcement arose if he refused to comply with the decision. The Board having no authority to invoke the aid of the courts (though aggrieved parties might of course institute civil proceedings against any alleged violator of section 7 *(a)*), the Board's only recourse was to refer the matter to the Compliance Division of the National Recovery Administration for the removal of the Blue Eagle (the possession of which signified acceptance of the new legislation by the party concerned), or remit the case to the Department of Justice for appropriate action, or take both of these measures. The lack of power to enforce its awards was one of the causes which lead to the failure of the Board. It also lacked power to compel attendance of witnesses. Moreover, its members received no remuneration and their irregular attendance undermined its prestige.

The National Labor Relations Board, 1934-1935. — On 19 June 1934 the President approved Resolution No. 44 [1] which had been passed by Congress three days before. The purpose of this Resolution was to empower the President to create a board or special boards to investigate labour disputes. They were also entrusted with the conduct, when necessary, of elections of representatives of workers to take part in collective bargaining. For this purpose they were given the power to compel the attendance of witnesses and the production of documents (rosters of employees). It was in virtue of this Resolution that on 29 June 1934 the President issued an Executive Order providing for the establishment of a National Labor Relations Board, in connection with the Department of Labor, which on 9 July of that year supplanted the first National Labor Board [2].

The National Labor Relations Board was composed of only three members, who were independent persons specially qualified to deal with labour matters. They were appointed by the President for an indefinite period of time and were paid for their services. The new Board was thus placed on a more permanent basis, but its powers of enforcement were unfortunately not more effective than those of its predecessor. During the first six months it was in operation, the

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[1] *L.S.*, 1934, U.S.A. 3.

[2] The President also set up a few special Boards, the most important being the Steel and Textile Labor Relations Boards.

National Labor Relations Board transmitted twenty-one cases to the Department of Justice for enforcement, but legal action was taken in only one instance. Moreover, when cases were referred to the Compliance Division of the National Recovery Administration for removal of the Blue Eagle, the Administration was at liberty to disagree with the recommendations of the Board.

This Board, except that it could summon witnesses, therefore had powers no greater than had several industrial relations boards provided for in industrial codes, or appointed by the President (such as the Automobile Labor Board) at various times and often for temporary purposes [1].

The National Labor Relations Board under the 1935 Act. — It soon became obvious that if the new legal principle of section 7 *(a)* were to be made effective, it would be necessary to have alongside the existing conciliation and arbitration machinery a method of procedure which would ensure enforcement of the principle. Congress consequently considered the creation of a new National Labor Relations Board with powers akin to those possessed by the Interstate Commerce Commission and the Federal Trade Commission.

The Interstate Commerce Commission, which was set up in virtue of an Act passed by Congress in 1887, was intended mainly for the regulation of transportation by rail and for the adjustment of differences between railroad companies and their customers. This Commission is composed of members appointed by the President and is empowered to make investigations in matters pertaining to transportation by rail and to hear complaints preferred either by itself or by private persons. The rules governing the proceedings before the Commission are simple and are modelled on those of the ordinary courts of law. An amending Act of 1906 gave force of law to the decisions of the Commission, which are nevertheless subject to revision by the ordinary courts of law.

Similar principles were incorporated in the Federal Trade Commission Act of 1914, which made provision for the establishment of a Commission of five members to order persons to desist from unfair methods of competition and from specified monopolistic practices in interstate commerce.

The disputes which come within the purview of these two Commissions do not include labour disputes. But it was necessary to mention these bodies, because they have been a structural model for the present National Labor Relations Board.

Another precursor of the present National Labor Relations Board is the series of labour boards that have existed for the railroad industry — the Railroad Labor Board of 1920, which was replaced in 1926 by the Board of Mediation (with only mediatory power) which in turn was replaced in 1934 by the National Mediation Board [2]. This existing

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[1] On these various boards see LORWIN and WUBNIG : *Labor Relations Boards*, pp. 332 *et seq.*

[2] *L.S.*, 1926, U.S.A. 1 ; amendments, 1934, U.S.A. 1 ; 1936, U.S.A. 1.

The Railway Labor Act of 1934 creating the National Mediation Board also set up the National Railroad Adjustment Board, which is composed of eighteen representatives of the railroad companies and eighteen representatives of the railroad labour unions, and has exclusive authority to settle controversies arising out of collective agreements in the railroad industry. The National Railroad Adjustment Board is, therefore, a

Board, despite its title, exercises in the field of transportation by rail powers as compulsive as, and in respect of the facilitation of collective bargaining like, those accorded to the present National Labor Relations Board. At the time the Bill creating the National Mediation Board with compulsory authority was before Congress in 1934, the Bill to create a permanent National Labor Relations Board was also under consideration, but did not reach enactment.

In 1935 substantially the same Bill was introduced again. It laid down rules of law, which restated and expanded the principle of section 7 *(a)* of the National Industrial Recovery Act (that Act, because of other provisions it contained, having been declared unconstitutional in May 1935 [1]) by prohibiting specific conduct of employers described as " unfair labor practices ". The National Labor Relations Board was to see that these practices ceased in interstate commerce (the field of national authority), just as the Federal Trade Commission existed to see that " unfair methods of competition " ceased in interstate commerce.

The hearings [2] on the Bill before the Senate Committee on Education and Labor provide evidence of the causes which led to the failure of the previous Boards and show what were the purposes of the sponsors of the Bill and the grounds of opposition to ensuring by legislation the procedure of collective bargaining, leading to collective agreements between employers and employees regarding conditions of work. On 5 July 1935 the Bill in question was approved by Congress and became the National Labor Relations Act [3]. The Board it created may be best described under the following headings.

2. The System in Force

Constitution and Composition of the Board. — The National Labor Relations Board, which entered upon its functions on 1 October 1935, is composed of three members appointed for overlapping terms of five years by the President of the United States with the advice and consent of the Senate. It supersedes the former National Labor Relations Board and is independent of the Department of Labor. The President nominates one of the three members to act as chairman

specialised labour court. It has nothing to do with the promotion of collective bargaining, but only with the supervision of the contracts which may be arrived at by collective bargaining. The awards are enforced by civil suit brought by the interested party in an ordinary court of law.

The amending Act of 1936 extends the provisions of the 1934 Act to every common carrier by air engaged in interstate or foreign commerce (and every carrier by air transporting mail for or under Government contract) and every air pilot or other person who performs any work as an employee of such carriers. It also provides for the creation, by the Mediation Board, of a National Air Transport Adjustment Board to be composed of four members, two selected by the carriers and two by the labour organisations of the employees concerned. Henceforth the National Labor Relations Board will not have jurisdiction over disputes affecting the employment relationship contemplated by the Railway Labor Acts.

[1] *International Survey of Legal Decisions on Labour Law*, 1934-35, United States, No. 1, 2nd case.

[2] Hearings before the Committee on Education and Labor, United States Senate. Seventy-fourth Congress. First Session on " S. 1958 ".

[3] *L.S.*, 1935, U.S.A. 1.

of the Board. Any member may be removed by the President on the ground of negligence or malfeasance in the performance of his duties, but only after he has been given due notice and a hearing. The Board is empowered to discharge all its functions so long as two of the members are present to constitute a quorum. The remuneration of each member is fixed by the Act at $10,000 per annum. Members may not engage in any other business, vocation or employment.

The Board appoints its executive secretary and such attorneys, examiners and regional directors or such other employees as may be necessary for the fulfilment of its task. The attorneys thus appointed may, at the request of the Board, represent the Board in any case before the courts of law. The Board was given power to establish regional, local or other such agencies as may be needed from time to time in the exercise of its functions. So far it has set up no less than 21 regional offices under the authority of regional directors. All the expenses incurred by the Board within the scope of its powers are defrayed by the Federal authorities, so that no costs are imposed on the litigants. The principal office of the Board is in the District of Columbia, but it may sit in any other part of the country.

Competence of the Board. — The Board has exclusive competence to deal with any charge that an employer is engaging in an unfair labour practice " affecting commerce " [1]. The definition of an unfair labour practice is found in the combined texts of sections 7 and 8 of the National Labor Relations Act, which read as follows :

Section 7. " Employees shall have the right to self-organisation, to form, join, or assist labor organisations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. "

Section 8. " It shall be an unfair labor practice for an employer —

" (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 ;

" (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it : *Provided,* that subject to rules and regulations made and published by the Board pursuant to section 6 *(a)* [2], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay ;

" (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage

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[1] Section 2, § 7, of the National Labor Relations Act says : " The term ' affecting commerce ' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. " And § 6 of the same section adds : " The term ' commerce ' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State and/or Territory or the District of Columbia or any foreign country. "

[2] This section authorises the Board to make such rules and regulations as may be necessary to ensure the application of the National Labor Relations Act.

membership in any labor organization : *Provided*, that nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 *(a)*, in the appropriate collective bargaining unit covered by such agreement when made ;

" (4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act ;

" (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 *(a)*. "

The section 9 *(a)* referred to in the foregoing quotation lays down that the representatives of employees designated for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purpose, are the competent representatives of all the members of such a unit for the negotiation of collective agreements in respect of wages, hours of work and other conditions of employment. But any individual employee or group of employees has a right at any time to present grievances to their employer.

It is further stipulated in the same section that whenever a dispute arises concerning the representation of employees, the Board may investigate the controversy by holding an appropriate hearing and certify to the parties, in writing, the name or names of the representatives that have been designated. It may even take a secret ballot of the employees or utilise any other suitable method to ascertain such representatives.

Consequently the Board may be called upon to adjudicate upon a great variety of labour questions, regardless of whether the dispute is one between an employer and his employees taken collectively or between an employer and one only of his employees. But its authority does not extend to the enforcement of contracts, either individual or collective.

The Parties and their Representatives. — The National Labor Relations Act of 1935 describes a labour dispute as " any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions or employment, regardless of whether the disputes stand in the proximate relation of employer and employee ". A distinctive feature of this definition consists in the fact that the dispute need not be one between an employer and his employee. Hence the National Labor Relations Board may deal with disputes in which the charge of unfair labour practice is laid against an employer by someone with whom he has no contractual relationship.

Neither the employer who is subject to the provisions of the Railway Labor Act of 20 May 1926 [1] nor the State, or the political divisions thereof, come under the jurisdiction of the Labor Board. Individuals

[1] *L.S.*, 1926, U.S.A. 1 ; amendments, 1934, U.S.A. 1. ; 1936, U.S.A. 1.

employed as agricultural labourers or in domestic service or by parent or spouse are also excluded from the purview of the National Labor Relations Act and consequently are not subject to the jurisdiction of the Labor Board. When the Act lays down that " any person aggrieved by a final order of the Board ... may obtain a review of such order " in any competent circuit court of appeals of the United States or in the Court of Appeals of the District of Columbia, it includes in the term " person " one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Although the Act does not contain any specific provisions with regard to the representation of the parties in proceedings before the Board, it must be taken for granted that any party to a labour dispute may appear before the Board either in person or through a representative, who is usually a qualified attorney.

Procedure

Labour disputes are brought before the Board or its agencies in accordance with certain rules of procedure laid down in the National Labor Relations Act and with such rules and regulations as the Board may from time to time adopt in virtue of the powers conferred upon it by legislation. It should be noted that the rules of procedure laid down by the National Labor Relations Act do not require that preliminary negotiations with a view to the adjustment of disputes by agreement between the parties are to be made before the matter is brought before the Board for adjudication.

The Act stipulates that " whenever it is charged that any person has engaged in or is engaging in any unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of such complaint ".

The person against whom the complaint is made has the right to file an answer to the complaint and to appear at the appointed time and place to defend his case.

The Trial. — Since the Act grants to the person against whom a complaint is lodged the right to appear and defend his case, without imposing on him a definite obligation to do so, it follows that the case may be heard and a decision may be rendered by the Board, or its agent, in favour of a party who not only is absent from the trial, but has not even put in a defence. The Act specifies that the intervention of third parties is in the discretion of the Board and that such intervention is not controlled by the rules of evidence which obtain in courts of law or equity.

The Board or its agent is also empowered to order any investigation which may be deemed necessary. For that purpose it may issue summonses to witnesses and, in case of a refusal to obey a summons, may request any district court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the enquiry is carried on or the person guilty of the refusal to obey the summons is found, resides or transacts business, to issue to the recalcitrant witness

an order requiring him to appear before the Board or its agent and there produce evidence or give testimony as required ; failure to obey such an order is punishable as contempt of court. To ensure greater despatch the orders of the Board or its agent may be served even by registered mail or by telegraph, in which case the post office receipt or the telegraph receipt are a sufficient proof that the order was issued and duly served.

Judgment and Execution. — The decision of the Board is not rendered in the form of an ordinary judgment having executory force, but in the form of an order the enforcement of which is subject to the intervention of the regular courts of law. When the evidence shows that the party named in the complaint has engaged in or is engaging in some unfair labour practice, the Board states its findings of fact and issues and causes to be served on the defendant an order requiring him " to cease and desist from such unfair labor practice ". If on the other hand the Board is of the opinion that there is no case of unfair labour practice, then, after stating its findings of facts, it issues an order dismissing the complaint.

For the enforcement of its orders the Board must petition a United States circuit court of appeals or, if the circuit court to which the application would be made is in vacation, a district court within any circuit or district where the unfair labour practice has occurred or where the person complained of resides or transacts business. A complete record of the proceedings is filed by the Board with the circuit or district court, which then, on the basis of the evidence contained in the record, may make a decree enforcing, modifying or setting aside in whole or in part the order of the Board. The findings of the Board as to the facts, if supported by evidence, are conclusive. The court will not consider new evidence that is offered, but may refer new evidence to the Board, which may then modify or set aside its original order.

Appeals. — The person against whom the Board has issued an order may obtain review of the order by the United States circuit court of appeals within whose jurisdiction the unfair labour practice was alleged to have been engaged in, or where the aggrieved party resides or transacts business, or again before the Court of Appeals of the District of Columbia. The application must be made in writing and served upon the Board, which must then supply to the applicant a certified copy of the entire proceedings on which the order is based. The applicant may then file the said copy of the record with the competent appeal tribunal, which will proceed in the manner described for enforcement of an order. In both instances the Supreme Court may, in its discretion, permit further review by it.

Court proceedings instituted by either the Board or the aggrieved party do not operate as a stay of execution of the Board's order unless it is specifically ordered by the Court.

3. Results

The National Labor Relations Board set up under the National Labor Relations Act of 5 July 1935 began its activities in October of that year. In its first annual report, covering the period up to 30 June 1936 [1], it is stated that it dealt mainly with two types of cases, namely :

[1] Cf. *First Annual Report of the National Labor Relations Board* for the fiscal year ended 30 June 1936, United States Government Printing Office, Washington, 1936.

charges that employers had engaged in unfair labour practices, and petitions for investigations to be made by the Board so that it may certify to the parties to a dispute the name or names of the representatives of employees who have been properly designated for purposes of collective bargaining and, if necessary, the supervision of the election of such representatives in accordance with the provisions of the Act.

During the period covered by the first report, the regional offices received 1,065 charges and petitions involving a total of 236,060 workers, while three charges and petitions, involving 4,805 employees, were filed directly with the Board. Of these there were 286 cases, involving 68,761 workers, pending on 30 June 1936. There were also 44 cases, involving 27,792 workers, in which the courts had granted injunctions restraining the Board from further action. The remaining 738 cases, amounting to 69.1 per cent. of the total and involving 144,312 workers, had been disposed of in a number of ways according to the nature of the case and the procedure applicable.

It is interesting to note that 201 cases involving 65,211 workers were closed as a result of the withdrawal of charges or petitions by the parties on the recommendation of the regional directors before the institution of formal proceedings under the Act. In 113 cases, involving 21,781 workers, the charges and petitions were dismissed by the regional directors. Settlements implying compliance with the provisions of the National Labor Relations Act were effected in 331 cases involving 40,354 workers. In 72 of the cases in which settlements were secured, strikes were actually in progress, whereas in 52 cases strikes had been threatened ; in the remaining cases, however, the disputes had not yet reached the stage of strike or threatened strike.

During the period from 1 July 1936 to 30 June 1937 [1], the regional offices received 4,059 charges and petitions involving a total of 1,307,293 workers, and 9 charges and petitions involving 90,989 workers were filed directly with the Board. These, together with the cases pending from the preceding year and those in which the courts had granted injunctions restraining the Board from further action during that first year, formed a total of 4,398 cases, involving 1,494,835 workers, which were dealt with by the Board during the second year of its activities.

Of this number, 2,054 cases in which 1,027,028 workers were involved remained pending on 30 June 1937. These included 6 injunction cases and 24 cases pending in circuit courts of appeal on petitions of the Board for enforcement of its orders or on petition for review of such orders. The balance of the cases, numbering 2,344, which is 53.3 per cent. of the total, and involving 467,807 workers, were disposed of in several ways.

Here again a large number of cases are found, actually 539 cases involving 73,040 workers, which were closed as a result of the withdrawal of the charges or petitions by the complainants themselves. Altogether 259 cases involving 41,129 workers were dismissed, while a settlement was reached in 1,429 cases involving 325,898 workers. In 446 of the cases in which settlements were secured, strikes were actually in progress, whereas in 254 cases strikes had been threatened and were averted. In the other cases no strikes had been contemplated.

For further information concerning the nature of the disputes or of the settlements effected and the principles established by the

[1] Cf. *Second Annual Report of the National Labor Relations Board* for the fiscal year ended 30 June 1937.

Board the reader must be referred to the very detailed Reports issued by the Board.

It is necessary to point out that the work of the Board has not progressed entirely unimpeded. In many instances industries have challenged the Board's right to hold hearings by seeking injunctions against it in Federal District Courts. The Board, through accredited representatives, has contested every application for injunctions on the ground that the National Labor Relations Act calls for such hearings by the Board to examine the facts of an unfair labour practice charge or to investigate employee representation controversies, that the Act provides for review of Board rulings in Circuit Courts of Appeal and also that resort to injunction suits to prevent Board hearings and investigations is an improper interference with its legally established procedure.

The point of view expounded by the Board was upheld by most Federal District Judges, but in a good many cases temporary injunctions were granted. Certain Circuit Courts of Appeal have affirmed the lower Court's denial of temporary injunctions, while others have affirmed the granting of injunctions. But essential questions of principle have been settled by two recent judgments rendered on appeal by the Supreme Court on 31 January 1938. In two cases, *Myers et al.* v. *Bethlehem Shipbuilding Corporation Ltd.*; *Myers et al.* v. *MacKenzie et al.* [1], it was held that the District Court has no jurisdiction to enjoin the Board from proceeding with the hearing on the ground that denial of a temporary injunction would subject the employer to irreparable damage. Otherwise the District Court would be substituted for the Board as the tribunal to hear and determine what Congress declared the Board should exclusively deal with and determine in the first instance. The District Court had erred in the cases under review in granting a preliminary injunction, and the Circuit Court of Appeals should have reversed the decree, notwithstanding the general rule that a decree of a District Court granting or denying a preliminary injunction shall not be disturbed on appeal.

In another case, *Newport News Shipbuilding and Dry Dock Company* v. *Schauffler et al.* [2] the Supreme Court confirmed the denial of the injunction requested on the grounds stated in the first judgment, and notwithstanding the further allegations, accepted as true conclusions of law, that the employing company is not engaged in interstate or foreign commerce and its relation to its employees does not affect such commerce. This decision is based on the initial power given to the Board to make investigations subject to review by the Circuit Court of Appeals. It does not imply that the Board as an administrative body is invested with exclusive power to determine its own jurisdiction; this would be contrary to the Federal Constitution.

These two decisions should remove to a very large extent the obstacles which the granting of preliminary injunctions by the Federal District Courts had placed in the way of the Board's power of making initial investigations in connection with the complaints with which it had to deal.

In five cases, settled by judgments dated 12 April 1937, the Supreme Court had already confirmed the much debated constitutionality of the Labor Relations Act of 1935 and of the National Labor Relations

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[1] Supreme Court, Nos. 181 and 182, October Term, 1937.

[2] Supreme Court, No. 305, October Term, 1937.

Board set up in accordance with its provisions [1]. In the cases then before the Supreme Court some employers had been charged with unfair practices consisting in the dismissal of workers on the ground of their trade union activity and for the purpose of discouraging others from joining the unions. The National Labor Relations Board had ordered these employers to cease this practice and to reinstate the discharged workers. As the employers did not carry out these orders, the Board applied to the competent Federal Court for the compulsory enforcement of the orders. The Federal Court refused to enforce them on the ground that the orders were not within the powers of the Federal authority. This was the point at issue before the Supreme Court, which decided that in the circumstances any suspension of work resulting from a dispute in industries organised on a national scale would have affected interstate commerce and consequently Congress had constitutional authority to safeguard, through the National Labor Relations Board, the workers' freedom of association and of choice of representatives for collective bargaining.

4. Summary

In the United States of America the adjudication of certain labour disputes is entrusted to the National Labor Relations Board and its regional offices established in virtue of the provisions of the National Labor Relations Act of 1935. This Board is composed of three independent members appointed by the President of the United States with the approval of Congress.

The Board is competent to deal by a quasi-judicial procedure with disputes connected with interstate commerce and arising out of the interference by employers with the freedom of their employees to organise for collective bargaining or the refusal of employers to engage in collective bargaining.

Enforcement of the Board's decisions can only be obtained by means of an application addressed by the Board to an appropriate court of law. In like manner any person against whom a decision of the Board has been issued may have it reviewed by an appropriate court. But the findings of fact of the Board are not reviewable.

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[1] Cf. *International Survey of Legal Decisions on Labour Law, 1936-37*, United States, No. 2, 1st, 2nd, 3rd, 4th and 5th cases.

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VENEZUELA

1. INTRODUCTION

The rapid developments in labour legislation which Venezuela has known during the last years made it imperative to devise special means for the adjustment of differences which were to arise out of the application of the new laws.

The Labour Act of 16 July 1936 [1] laid down that pending the establishment of a special labour judiciary there should be set up a temporary court composed of the competent labour inspector, or a person appointed by him, to deal with disputes to which conciliation and arbitration procedure did not apply and with disputes arising out of the application of legislative provisions or of contracts of employment.

Either party to a dispute was at liberty to require that the inspector or his substitute should be assisted by two assessors, each litigant choosing one of the assessors. In such a case the decisions of the special court were taken by a majority vote. The rules of procedure applicable were those contained in the Civil Procedure Code.

Against the decisions of this special court only one appeal was allowed — to the Director of the National Labour Office, and it had to be made within three days of the communication of the decision of the special court to the parties.

2. THE SYSTEM IN FORCE

A Legislative Decree dated 15 November 1937 [2] has now replaced the temporary labour court by a permanent labour judiciary comprising three labour courts of first instance, and a labour court of appeal with its seat in the city of Caracas.

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[1] *L.S.*, 1936, Ven. 2.

[2] Cf. *Gaceta Oficial*, 16 November 1937, No. 19418, p. 115321.

Each labour court of first instance is composed of a judge who must be an official of the federal judiciary. He must also be a lawyer and possess certain other qualifications laid down in section 2 of the Civil Procedure Code. If the parties so request the judge may be assisted by two assessors chosen, as before, by the parties to the dispute. In order to avoid such delays as may be occasioned by the illness or absence of the judge, the law prescribes that five substitutes must be named at the time a judge is appointed.

The labour court of appeal, on the other hand, is composed of five members including a chairman, a vice-chairman, a counsellor and two assessors, all of whom must be trained in the law and fulfil the requirements specified in section 2 of the Civil Procedure Code. Three of the five members of the labour court of appeal constitute a quorum for the ordinary proceedings of the court, but the five members must concur in the delivery of a judgment, whether it is an interlocutory or a final decision.

Here again the course of the law is not impeded by the inability of one of the members to attend the sittings, since the Decree stipulates that ten substitutes are to be named at the same time that the five members of the court are appointed. But the chairman would be replaced by the vice-chairman, the vice-chairman by the counsellor, and so on.

The judges of the labour courts, whether of first instance or of appeal, may be challenged under the same conditions as apply to regular judges under the Civil Procedure Code.

The permanent labour judiciary thus created will handle all disputes which are not susceptible of adjustment by conciliation and arbitration procedure, and disputes, individual or collective, based on labour law or on the terms of contracts of employment.

The rules of procedure to be adopted will doubtless be modelled on those prescribed in the Civil Procedure Code. They are to be discussed and fixed definitively by the legislative assembly at its 1938 Session.

YUGOSLAVIA

1. Introduction

For several years after Yugoslavia became a State by virtue of the provisions of the Treaties of Peace which followed the World War the settlement of labour disputes in that country was subject to the various systems of procedure which had been in force in the various territorial sections that were incorporated in the new State. For instance, the system based on the Austrian law of 1896 [1] prevailed in the former Crown Land of Carniola, in parts of Steiermark and Carinthia and in Bosnia and Herzegovina, which had become part of Yugoslavia.

[1] This law provided for the creation of industrial courts composed of a professional judge as chairman and of four assessors, that is two employers and two workers appointed from lists drawn up respectively by representative bodies of employers and of workers.

In the areas which had once belonged to Montenegro practically no laws concerning the settlement of individual and collective labour disputes had existed and consequently no machinery to that effect had been handed down at the time of their annexation to the new Kingdom. But in the areas which had belonged to Hungary, the Hungarian law of 1884 was in force. That law provided for the settlement of labour disputes by conciliation committees set up within the guilds, and by the administrative authorities [1].

Another judicial labour system was that which continued in operation in that part of the country which at one time constituted Serbia. The machinery there in existence was based on the Industrial Act dated 29 June-12 July 1910 [2]. The history of this particular legislative enactment has already been given in the first chapter entitled " Economic Background and Development " on conciliation and arbitration in Yugoslavia [3].

The method of settling labour disputes just alluded to consisted in a number of probiviral courts set up in the important industrial centres and composed of three members : a representative elected by the employers, one elected by the workers and a chairman chosen by the foregoing two representatives from among citizens outside their rank. Their task was to settle individual labour disputes between employers and their employees or apprentices. These courts had compulsory jurisdiction when the sum involved in the dispute did not exceed 200 dinars. Beyond that amount the consent of the parties was required. The procedure was summary and free of charge. It began with an attempt to settle the matter amicably. Failing conciliation a judgment having executory force was rendered by the probiviral court.

In 1912 the competence of the probiviral courts was extended to include collective labour disputes. In the course of time other methods of dealing with collective disputes [4] were devised but individual labour disputes occurring within the boundaries of old Serbia continued to be handled by the probiviral courts until the coming into operation of the new Industrial Act of 5 November 1931 [5].

2. The System in Force

The Industrial Act of 1931 deals with various aspects of Yugoslavia's industrial life. In determining the rights and obligations of employers and employees it draws a distinction between subordinate commercial employees and those who hold the higher positions. It empowers the Minister of Commerce and Industry to specify by Order and in agreement with the Minister of Social Affairs and Public Health " the employment deemed to be of a higher grade ". The Act also distinguishes between ordinary workers and those employed in factories

[1] A brief summary of this Hungarian law has already been given in the introduction to the monograph on Rumania. Cf. above pp. 158.

[2] *Bulletin of the International Labour Office*, Basle, 1911, Vol. VI, p. 201.

[3] Cf. *Conciliation and Arbitration in Industrial Disputes*, pp. 488 *et seq.*

[4] *Ibid.*, pp. 491 *et seq.*

[5] *L. S.*, 1931, Yug. 4. See also the Yugoslav Official Journal — *Sluzbene novine* — No. 178-XLIII, of 5 August 1936.

and handicraft undertakings. It gives an exhaustive list of the occupations to be considered as handicrafts and authorises the Minister of Commerce and Industry, after consulting the competent chambers of employers and of employees, to extend or shorten the list.

Provision is also made for the establishment of probiviral courts to deal with individual labour disputes in any part of the country. The compulsory associations of persons engaged in commerce or in handicrafts may, with the approval of the competent administrative authority, set up in their midst a permanent probiviral court, on the model of the regular probiviral courts, for the settlement of disputes arising out of conditions of employment between members of the association and employees in the service of the members of the association.

The Act provides that, while awaiting the setting up of the probiviral courts, disputes between employers and employed shall be adjusted in accordance with the law previously in force. The Act came into operation as a result of an Order of 20 June 1936, published in the Official Journal of 5 August 1936 [1] and brought into force four months after publication, prescribing the establishment of probiviral courts in all parts of the country except in the districts where industrial courts exist based on the Austrian law of 1896. Henceforth the work of the arbitral tribunals set up in accordance with collective agreements will be carried out by the probiviral courts. Where probiviral courts cannot conveniently be set up, the ordinary courts of law will handle any dispute which falls within the competence of probiviral courts.

Constitution and Composition of the Courts. — The probiviral courts consist of a chairman and at least one representative of the employers and one representative of the workers, and substitutes. The chairman is usually the principal officer of the local administrative authority, provided that he possesses a full University training in law. Otherwise the post is entrusted to a public official in service or retired. A substitute having similar qualifications is appointed to the chairman and acts as vice-chairman. Three members, including the chairman or vice-chairman, constitute a quorum. An official of the local administrative authority acts as secretary to the court.

The appointments of the members to the courts are made for a term of four years by the ban or governor of the province. In the case of the representative of the employers' and workers' groups nominations are made by the competent Chambers of Commerce and Industry and the chambers of employees. The qualification of the members and their substitutes are that they must be adult Yugoslav nationals of irreproachable conduct and in full possession of their civic rights. Moreover, the workers' representatives must have had at least three years' experience in their trade. Any member may be removed from office by the ban if they cease to satisfy the requirements for appointment.

Competence of the Courts. — Exclusive jurisdiction is given to the probiviral courts in all individual disputes arising out of the contract of employment between employers and subordinate commercial employees and workers or apprentices occupied in factories and in handicraft undertakings. Section 344 of the Industrial Act specifies that " if the sum involved in the dispute does not exceed 12,000 dinars, the probiviral courts shall be competent :

[1] *Sluzbene novine.* No. 178-XLIII, 5 August 1936.

" 1. in disputes respecting wages or salaries ;

" 2. in disputes respecting the validity of the contract of employment, the beginning, duration and termination of the contract of apprenticeship or employment of employees, and the performance of work in the undertaking ;

" 3. in disputes arising out of a contract of employment or apprenticeship with respect to the performance of work and compensation, in particular disputes respecting the calculation of wages, breaks, and agreed penalties ;

" 4. in disputes respecting the issue and filling-up of work books, certificates, etc., and disputes respecting damages incurred in connection therewith ;

" 5. in disputes respecting notice to leave and eviction from employees' dwellings, etc., which the employees specified above are entitled to use free of charge or subject to payment therefor. "

The probiviral courts have no jurisdiction in the case of disputes between employers and employees of a higher grade, or in cases where the parties have agreed to submit the dispute to a probiviral court set up by a compulsory association of persons employed in commerce and handicrafts, or again in disputes based on a question of principle arising out of collective agreements and affecting individual rights.

The Act moreover lays down that the court of the area in which the undertaking, workplace, premises or factory is situated has territorial jurisdiction. When employees are occupied outside the workplace and are paid by the piece or job, the competent court is the one in the area of which the work is performed or paid for.

The Parties and their Representatives. — The parties to an action before the labour courts may be represented by either members of their family, business managers, salaried or wage-earning employees in the trade concerned or by representatives of trade organisations of employers or employees. The services of an advocate may also be retained but at the expense of the party who employs him.

Procedure

The proceedings are governed by the most simple rules of procedure. The complaint is lodged with the local administrative authority either in writing or orally. It need only contain a definite claim with the requisite particulars.

Preliminary Proceedings. — At a preliminary hearing, which must be held in private and not later than eight days after the lodging of the complaint, the chairman may alone attempt to bring about a settlement of the dispute by means of a compromise or by agreement between the parties. On that occasion he may also decide as to the validity of objections raised against the competence of the court, and issue a decision noting the acceptance or waiver of the claim or give judgment by default. He may even try the case himself if both parties agree to waive the participation of the other members.

The Trial. — When it has been found impossible to effect a settlement at the preliminary hearing before the chairman alone, the matter is remitted to the court proper. A member may be challenged on the ground that he is personally interested in the dispute, that he

is a godfather or is related by blood or marriage to one of the parties, or if he holds a power of attorney for, or is a business manager or guardian to, one of the parties to the dispute.

At the trial the Court *must* first endeavour to settle the matter by conciliation. If an agreement can be reached, a record thereof is signed by the parties and by the members of the probiviral court. It is the duty of the local administrative authority to see that the agreement is carried out. Failing conciliation, the evidence adduced is looked into and the matter is dealt with by judicial decision at a public session unless both parties have failed to appear, in which case the proceedings are suspended.

Judgment and Execution. — The judgment of the court is adopted by a majority vote. It becomes enforceable eight days after the date of its pronouncement. It is enforced at the request of the party concerned by the competent administrative authority in accordance with the rules governing general administrative procedure, which also apply to the enforcement of conciliation agreements.

Appeals. — An appeal against the decision of a probiviral court may be made to the competent district court in accordance with the relevant provisions of the Civil Procedure Code. The judgment of the district court is final.

3. Results

Owing to the diversity of judicial labour systems in existence in Yugoslavia before the passage of the Industrial Act of 5 November 1931, no uniform statistics are available for that country. And as the law of 1931 came into operation only in the second half of 1936, no figures are as yet obtainable to show the results achieved under the new system.

4. Summary

The labour judiciary in Yugoslavia consists of a network of probiviral courts set up in connection with the local administrative authority and composed of an impartial chairman with a University training in law and a requisite number of members and substitutes selected according to the recommendations of the competent Chambers of Commerce and Industry and of the chambers of employees.

The probiviral courts are competent to deal with individual labour disputes arising out of contracts of employment between employers and subordinate commercial employees, factory workers, handicraftsmen and apprentices.

The proceedings before these courts are very summary. The parties may appear either in person or through a representative. Conciliation proceedings may be held before the chairman alone. The Court must endeavour to settle the matter by agreement between the parties before it begins the trial of the action.

Conciliation agreements and decisions of the probiviral courts are enforceable at the request of the party concerned by the local administrative authority in accordance with the general provisions regulating administrative procedure. Appeals against the decisions of the labour courts may be lodged before the ordinary district courts subject to the relevant rules contained in the Civil Procedure Code.

APPENDIX

PRINCIPAL LAWS [1] ON LABOUR COURTS IN THE DIFFERENT COUNTRIES, UP TO 31 DECEMBER 1937

BELGIUM

Act respecting probiviral courts. Dated 9 July 1926. (*L. S.*,[2] 1926, Bel. 10.)

Act to amend section III of the Act of 9 July 1926, respecting probiviral courts. Dated 30 May 1928. (*L. S.*, 1928, Bel. 4.)

BOLIVIA

Act to set up the General Labour Dictatorate and to regulate the organisation and specify the duties of the departmental offices. Dated 12 February 1927. (*L. S.*, 1927, Bol. 1. — A. B.)

CHILE

Legislative Decree No. 178, to ratify the Labour Code. Dated 13 May 1931. (*L. S.*, 1931, Chile 1.)

Legislative Decree No. 207 concerning the competence, seat and staff, of the labour courts. Dated 14 July 1932 (*Diario Oficial* No. 16357 of 28 August 1932).

Act No. 5158 concerning the control and supervision of the labour courts by the Supreme Court. Dated 12 April 1933 (*Diario Oficial*, No. 16551 of 13 April 1933).

CZECHOSLOVAKIA

Act respecting jurisdiction in disputes arising out of employment service or apprenticeship (labour courts). Dated 4 July 1931. (*L. S.*, 1931, Cz. 3.)

Act of 11 December 1934 to amend and supplement certain sections of the Acts concerning the code of civil procedure, the execution of judgments and the settlement of other disputes. (*Sammlung der Gesetze und Verordnungen des Cechoslovakischen Staates*, 1934, No. 251, p. 851.)

Act of 16 June 1936 to amend and supplement certain sections of the Acts on the competence of the courts, civil procedure, the execution of judgments and the administration of justice. (*Sammlung der Gesetze und Verordnungen des Cechoslovakischen Staates*, 1936, No. 161, p. 613.)

[1] Numerous references to other laws indirectly affecting the competence of the labour courts will be found in the national monographs.

[2] *Legislative Series*, published by the International Labour Office, Geneva.

DANZIG

Labour Courts Act. Dated 28 December 1928. (*L. S.*, 1928, Danz. 2.) Legislative Decree amending the Labour Courts Act. Dated 28 June 1934. (*Gesetzblatt für die Freie Stadt Danzig*, 1934, No. 49, p. 473.)

DENMARK

Notification No. 37 to issue Act No. 526 of December 1921 respecting intervention in labour disputes, as amended by the Act of 28 February 1927. Dated 28 February 1927. (*L. S.*, 1927, Den. 1 ; amendment : 1934, Den. 1.)

ECUADOR

Act respecting procedure in actions at law arising out of employment relations. Dated 6 October 1928. (*L. S.*, 1928, Ec. 6.)

Act respecting procedure in actions at law arising out of employment relations. Dated 24 April 1936. (*Registro Oficial*, 28 April 1936, No. 176, p. 981, and 20 July 1936, No. 244, p. 689.)

FRANCE

Act to codify the labour laws (Book IV of the Code of Labour and Social Welfare). Dated 21 June 1924. (*L. S.*, 1924, Fr. 3.)

Act to extend to agriculture the provisions of the Act of 27 March 1907 respecting probiviral courts. Dated 25 December 1932. (*L. S.*, 1932, Fr. 11.)

Decrees setting up agricultural sections of probiviral courts. Dated 27 October 1937. (*Journal Officiel*, 30 October 1937, pp. 12091-3.)

GERMANY

Labour Courts Act. Dated 23 December 1926. (*L. S.*, 1926, Ger. 8.)

Act for the organisation of national labour. Dated 20 January 1934. (*L. S.*, 1934, Ger. 1.)

Orders for the administration of the Act of 20 January 1934 for the organisation of national labour. March, April and June 1934. (*L. S.*, 1934, Ger. 6.)

Labour Courts Act. Dated 10 April 1934. (*L. S.*, 1934, Ger. 5.)

Act transferring the administration of the labour judiciary to the Reich. Dated 24 January 1935. (*Reichsgesetzblatt*, 1935, I, p. 68.)

Act to amend the Labour Courts Act. Dated 20 March 1935. (*L. S.*, 1935, Ger. 5.)

Guiding principles concerning the representation of litigants issued by the Minister of Labour. Dated 13 June 1935. (*Reichsarbeitsblatt*, No. 18, I, p. 203.)

Decree concerning the competent authorities for the creation and administration of the labour judiciary. (*L. S.*, 1935, Ger. 5.)

ITALY

Royal Decree No 471, issuing regulations for the settlement of individual disputes arising out of employment. Dated 26 February 1928. (*L. S.*, 1928, It. 1.)

Royal Decree No. 1073. Regulations for the settlement of individual disputes arising out of employment. Dated 21 May 1934. (*L. S.*, 1934, It. 2.)

MEXICO

Federal Labour Act. Dated 18 August 1931. (*L. S.*, 1931, Mex. 1.)

Decree to amend various sections of the Federal Labour Act. Dated 19 January 1934. (*L. S.*, 1934, Mex. 1 — B.)

MOROCCO

Decree establishing probiviral courts in the French zone of the Shereefian Empire. Dated 16 December 1929. (*L. S.*, 1929, Mor. 1.)

NORWAY

Act respecting labour disputes. Dated 5 May 1927. (*L. S.*, 1927, Nor. 1 — A.)

Act to amend the Act respecting labour disputes. Dated 19 June 1931. (*L. S.*, 1931, Nor. 1.)

Act to amend the Act of 5 May 1927 respecting labour disputes. Dated 6 July 1933. (*L. S.*, 1933, Nor. 2.)

PERU

Act No. 6871, to set up labour courts in Lima and Callao. Dated 12 April 1930. (*L. S.*, 1930, Peru, 1.)

Act No. 8084 setting up a labour court in Lima. Dated 21 March 1935. (*Industria Peruana*, May 1935, No. 5, p. 212.)

Decrees respecting the establishment of a legal section in the Department of Labour to give free legal assistance to the workers. Dated 10 July 1935 and 6 December 1935. (*Industria Peruana*, August 1935, No. 8, p. 334, and January 1936, No. 1, p. 14.)

Decree respecting conciliation and arbitration procedure for the settlement of individual and collective labour disputes. Dated 23 March 1936. (*Boletin del Trabajo*, Peru, 1st and 2nd semesters 1936, No. 1, p. 5.)

POLAND

Order of the President of the Republic concerning labour courts. Dated 22 March 1928. (*L. S.*, 1928, Pol. 5.)

Order of the President of the Republic concerning labour courts. Dated 24 October 1934. (*L. S.*, 1934, Pol. 3.)

Order of the Minister of Justice and the Minister of Social Welfare respecting the expiry of the term of office of assessors of labour courts. Dated 30 November 1935. (*Poln. Gesetze u. Verordnungen*, 26 December 1935, No. 23, p. 628.)

PORTUGAL

Legislative Decree on labour courts. Dated 15 August 1934. (*L. S.*, 1934, Por. 3.)

RUMANIA

Act respecting the institution and organisation of labour courts. Dated 14 February 1933. (*L. S.*, 1933, Rum. 1.)

Royal Decree supplementing sections 31 and 76 of the Act respecting the institution and organisation of labour courts. Dated 14 May 1937. (*Moniturul Oficial*, 17 May 1937, No. 111, p. 4654.)

obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes. Approved 5 July 1935. (*L. S.*, 1935, U.S.A. 1.)

Railway Labor Act. Approved 20 May 1926. (*L. S.*, 1926, U.S.A. 1 ; amendments : 1934, U.S.A. 1 ; 1936, U.S.A. 1.)

VENEZUELA

Labour Act. Dated 16 July 1936. (*L. S.*, 1936, Ven. 2.)

Decree concerning the establishment of a special labour judiciary. Dated 15 November 1937. (*Gaceta Oficial*, 16 November 1937, No. 19418, p. 115321.)

YUGOSLAVIA

Industrial Act. Dated 5 November 1931. (*L. S.*, 1931, Yug. 4.)